

JUDICIARY AND RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

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IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

05.01.01 - RULES FOR CONTRACT PROVIDERS

DOCKET NO. 05-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 20-504(9), 20-504(11), and 20-531(4), Idaho Code, and Prison Rape Elimination Act of 2003 (Public Act 108-79).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Minor changes were made to answer a question from the rules committee by adding a prohibition against volunteers or interns participating in strip searches or visual inspections.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 105 through 134.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact on the general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Nancy Bishop (208) 334-5100 ext. 421.

DATED this 20th day of October, 2009.

Nancy Bishop
Lead Deputy Attorney General
Idaho Department of Juvenile Corrections
954 West Jefferson, Boise, ID 83720-0285
(208) 334-5100 ext. 421
(208) 334-5120 Fax

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 20-504(9), 20-504(11), and 20-531(4), Idaho Code, and Prison Rape Elimination Act of 2003 (Public Act 108-79).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule changes are needed to clarify current practices, update current practices, update definitions and use accordingly throughout the chapter, and remove redundancies.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed rule changes are designed to assist the quality improvement process by clarifying requirements for contract providers to follow. Many changes were requested by the stakeholders and included their input.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Nancy Bishop, Deputy Attorney General Idaho Department of Juvenile Corrections, 334-5100, extension 421.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

01. Section 20-504(9), Idaho Code. Pursuant to Section 20-504(9), Idaho Code, the department shall establish minimum standards for the operations of all private residential and nonresidential facilities and programs which provide services to juvenile offenders. (4-6-05)

02. Section 20-504(11), Idaho Code. Pursuant to Section 20-504(11), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Chapter 52, Title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of the Juvenile Corrections Act. (4-6-05)

~~**03. Section 20-545(1), Idaho Code.** Pursuant to Section 20-545(1), Idaho Code, the department shall have the power to adopt rules for the state juvenile corrections center as may be required by the Juvenile Corrections Act. (4-6-05)~~

043. Interstate Compact on Juveniles. By the provisions of Sections 16-1901, et seq., Idaho Code, the “Interstate Compact on Juveniles,” the department is authorized to promulgate rules and regulations to carry out more effectively the terms of the compact. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

007. REGIONAL FACILITY CONTACT INFORMATION.

01. Region 1 Facility. The Juvenile Corrections Center at Lewiston may be contacted at (208) 799-3332. ()

02. Region 2 Facility. The Juvenile Corrections Center at Nampa may be contacted at (208) 465-8443. ()

03. Region 3 Facility. The Juvenile Corrections Center at St. Anthony may be contacted at (208) 624-3462. ()

0078. -- 009. (RESERVED).

010. DEFINITIONS.

As used in this chapter: (4-6-05)

01. Adult. A person eighteen (18) years of age or older. (4-6-05)

02. Assessment. The process of gathering information to determine risk and program needs for the purpose of guiding placement decisions and to develop the service plan. (4-6-05)

03. Clinical Services Administrator. Administrative person who has oversight of the department's clinical services division. Supervises the regional clinical supervisors and works with the regional superintendents in the maintenance and development of treatment programs. (4-6-05)

04. Clinical Supervisor. Person who supervises juvenile services coordinators and clinicians in assigned regions. This person is responsible for recommending releases from department custody and approving transfers in collaboration with the clinical services administrator, and regional superintendent. This responsibility also includes oversight of the regional observation and assessment process, and assists in the maintenance and development of treatment programs. (4-6-05)

05. Commit. Commit means to transfer legal custody to the Idaho Department of Juvenile Corrections. (4-6-05)

06. Community Treatment Team. A team including the juvenile services coordinator, contract provider case manager, juvenile probation officer, family, and others, as necessary, who work together to provide input into each juvenile offender's service implementation plan, implement their respective sections of that plan, and monitor and report progress on treatment goals. (4-2-08)

07. Contraband. Any item not issued or authorized by the contract provider. (4-6-05)

08. Confidential Information. Information that may only be used or disclosed as provided by state or federal law, federal regulations, or state rule. (4-6-05)

09. Contract Provider. A residential or nonresidential program under contract with the department to supervise juvenile offenders, provide accountability and competency development in the least restrictive setting, consistent with public safety. (4-2-08)

10. Court. Means district court or magistrate's division thereof. (4-6-05)

11. Criminogenic Needs. Assessed juvenile offender risk factors or attributes of juvenile offenders that are directly linked to criminal behavior and, when changed, influence the probability of recidivism. (4-2-08)

12. Department. The Idaho Department of Juvenile Corrections. (4-6-05)

13. Detention. Detention means the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities. (4-6-05)

14. Director. The director of the Idaho Department of Juvenile Corrections. (4-6-05)

15. Education Plan. A written plan for general education students outlining the

coursework they will complete each year towards meeting the Idaho Achievement Standards and recommended coursework for their grade level and based on assessed academic, emotional, developmental and behavioral needs, and competencies. Students qualifying for Individuals with Disabilities Education Act (IDEA) services will have an Individual Education Plan (IEP) in lieu of an education plan. (4-2-08)

16. Escape. Attempting to leave or leaving a facility without permission, or attempting to leave or leaving the lawful custody of any officer or other person without permission. ()

167. Facility. The physical plant associated with the operation of residential or nonresidential programs. (4-6-05)

178. Facility Treatment Team. The group of staff employed by the department or by the contract provider who have input into developing the juvenile offender's service implementation plan; who provide direct services to juvenile offenders; and who monitor and report on the progress on meeting the goals in that plan. The facility treatment team is responsible for working with the community treatment team to develop and implement the service implementation plan. (4-2-08)

189. General Education Student. A student who does not qualify for special education services under the Individuals with Disabilities Education Act (IDEA). (~~4-2-08~~)()

~~**190. Health Assessment.**~~ The purpose of a health assessment is to thoroughly review and determine a juvenile offender's comprehensive health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-2-08)

~~**201. Health Screening.**~~ The purpose of a health screening is to quickly identify a juvenile offender's immediate health needs and to determine if there are any immediate needs related to a chronic health condition. (4-2-08)

~~**212. Health Services.**~~ Health services are defined as including, but not limited to, routine and emergency medical, dental, optical, obstetrics, mental health, or other related health service. (4-6-05)

~~**223. Incident Report.**~~ A written document reporting any occurrence or event, or any other incident which threatens the safety and security of staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (4-2-08)

~~**234. Individual Community Pass.**~~ An individual community pass includes any instance in which a juvenile offender leaves the contract provider's facility for a planned activity, without direct supervision by at least one (1) contract provider or department staff. Regular school or work attendance, regular participation in off-site treatment sessions or groups and other regular off-site activities specifically included in the service implementation plan or written reintegration plan and approved by the juvenile services coordinator are not included in this definition. Individual community passes include, but are not limited to: (4-2-08)

a. Day passes alone or with family or other, approved individuals; (4-2-08)

- b.** Day or overnight home visits; (4-2-08)
- c.** Recreational activities not otherwise approved as a part of a group activity; and (4-2-08)
- d.** Funeral leave. (4-2-08)

245. Individual Education Plan (IEP). A written document (developed collaboratively by parents and school personnel) which outlines the special education program for a student with a disability and is based on assessed academic, emotional, developmental and behavioral needs, and competencies. This document is developed, reviewed, and revised at an IEP meeting at least annually. (4-2-08)

256. Interns. A paraprofessional staff who is pursuing a degree and who, as a part of documented coursework with a college or university, may provide counseling or other services to juvenile offenders in the department's custody or their families, under direct supervision of qualified staff. (4-2-08)

267. Judge. A district judge or a magistrate. (4-6-05)

278. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (4-6-05)

289. Juvenile Offender. A person under the age of eighteen (18), committed by the court to the custody, care and jurisdiction of the department for confinement in a secure facility following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult. (4-6-05)

2930. Juvenile Records. Information concerning the juvenile offender's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, detainer, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (4-2-08)

301. Juvenile Services Coordinator. An individual employed by the department who is responsible for the monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. This responsibility includes monitoring service plans and progress reports and sharing information with family, community, courts, and with other department employees. (4-2-08)

312. Legal Custody. The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. (4-2-08)

323. Legal Guardian. A person appointed as guardian of a minor under the laws of

Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-6-05)

334. Mechanical Restraints. Any method of physical control of a juvenile offender which involves the use of devices to restrict physical activity. (4-2-08)

345. Mental Health Assessment. The purpose of a mental health assessment is to thoroughly review and determine a juvenile offender's comprehensive mental health needs. This information is used to develop the medical terms of a juvenile offender's service plan. (4-2-08)

356. Mental Health Screening. The purpose of mental health screening is to quickly identify a juvenile offender's immediate mental health needs and to determine if there are any immediate needs related to a chronic mental health condition. (4-2-08)

367. Nonresidential Programs. Programs providing services to juveniles in the custody of the department and their families in which the juvenile offender continues to live with a parent or guardian and not in a residential care facility. (4-2-08)

378. Observation and Assessment Program. A residential or nonresidential program designed to complete assessments of juveniles in the custody of the department. (4-6-05)

389. Physical Restraint. Any method of physical control of a juvenile offender which involves staff touching or holding a juvenile offender to limit or control ~~his~~ the juvenile offender's actions. (4-2-08)()

40. PREA. Prison Rape Elimination Act of 2003. ()

3941. Quality Assurance. Department employees responsible for overseeing contract providers' compliance with contract terms and these rules. (4-6-05)

402. Region. Subunits of the department organized by geographical areas and including all services and programs offered by the department in that area. (4-6-05)

413. Regional Facility. Department operated juvenile correctional centers located in each region of the state. (4-6-05)

424. Reintegration Plan. That part of the juvenile offender's service plan which specifically addresses the terms, conditions and services to be provided as the juvenile offender moves to a lower level of care or leaves the custody of the department. (4-2-08)

435. Release from Department Custody. Refers to the termination of the department's legal custody of a juvenile. (4-6-05)

446. Restitution. Financial payment or service work intended to reimburse victims for the cost of damage or harm caused by a juvenile offender. Restitution may be court ordered or may be imposed following a formal disciplinary process within a contract provider program.

(4-2-08)

457. Restricted Clinical Information. Any record, document or other information legally protected from dissemination to the general public by statute or rule, such as psychological evaluations, therapy notes, therapy journals, sex histories, polygraph results, and psychological testing, or other legally confidential information. (4-6-05)

468. Room Confinement. Instances in which ~~a~~ juvenile offenders ~~is~~ are confined in the room in which ~~he~~ they usually sleeps, rather than being confined in an isolation room. (4-2-08)()

479. Separation or Isolation. Any instance when ~~a~~ juvenile offenders ~~is~~ are confined alone for over fifteen (15) minutes in a room other than the room in which ~~he~~ they usually sleeps. (4-2-08)()

4850. Service Implementation Plan. A written document produced and regularly updated by a regional facility or contract provider with input from the community treatment team within thirty (30) days of arrival at regional facility or contract provider. This plan describes interventions and objectives to address the service plan goals including the areas of community protection, accountability, and competency development. (4-2-08)

4951. Service Plan. A written document produced during the observation and assessment period following commitment to the department that defines the juvenile offender's criminogenic needs and risks, strengths, goals, and recommendations for family and reintegration services. The service plan addresses the relevant needs and services for each juvenile offender in areas such as mental health, medical, education, substance abuse, and social skills. (4-2-08)

502. Sexual Misconduct. Sexual misconduct includes all types of assault, violence, intimidation, and harassment of a sexual nature directed toward juvenile offenders by staff or by other juvenile offenders. (4-2-08)

513. Staffing. Regularly scheduled meetings of the community and facility treatment team members to review progress on treatment goals and objectives identified in each juvenile offender's service implementation plan. (4-2-08)

524. Strip Search. An examination of the juvenile offender's naked body for weapons, contraband, injuries, or vermin infestations. This also includes a thorough search of all the juvenile offender's clothing while such is not being worn. (4-2-08)

535. Suicide Risk Assessment. An evaluation performed by a mental health professional to determine the level of immediate risk of a juvenile offender attempting suicide, and to apply this information in developing a safety plan for the juvenile offender. (4-2-08)

546. Suicide Risk Screening. An evaluation that is used to quickly determine, based upon known history and current behavior, whether a juvenile offender presents any identifiable risk of immediate suicidal behavior, and to call in a mental health professional to complete a suicide risk assessment. (4-2-08)

557. Transfer. Any movement of a juvenile offender in the custody of the department from one (1) facility to another, including a regional facility, without a release from department custody. (4-2-08)

568. Treatment. Any program of planned services developed to meet risks and needs of juvenile offenders and their families, as identified in an assessment, and as related to activities designed to teach alternate behaviors and to support change in the beliefs that drive those behaviors. Treatment as referenced in this context also includes the maintenance of conditions that keep juvenile offenders, staff and the community safe. (4-2-08)

579. Variation. The means of complying with the intent and purpose of a child care licensing rule in a manner other than that specifically prescribed in the rule. (4-6-05)

5860. Vocational Services. Any service provided related to assessment, education, guidance or training in the area of work or basic living skills. (4-6-05)

5961. Volunteer. A person from the community who freely chooses to do or provide both direct or indirect services to juvenile offenders or staff at a facility or juvenile correctional center. This person is not compelled to do so and is not compensated for the services. (4-2-08)

602. Waiver. The nonapplication of one (1) or more of these rules based upon a request by the provider and a written decision issued by the department. (4-6-05)

613. Work Program. A public service work project which employs juveniles at a reasonable wage for the purpose of reimbursing victims of juveniles' delinquent behavior. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

206. JUVENILE RECORDS.

01. Case Management Documents. The contract provider shall maintain individual files on all juvenile offenders which shall include: (4-2-08)

- a.** Observation and assessment report provided by the department; (4-6-05)
- b.** A copy of the signed Referral Acceptance/Denial Form; (4-6-05)
- c.** Additional assessments, which must be kept separate; (4-6-05)
- d.** Service implementation plans as referred to in Subsection 271.01 of these rules; (4-6-05)
- e.** Progress reports as referred to in Subsections 271.07 and 271.08 of these rules; (4-6-05)

- f.** Progress Assessment/Reclassification documents; (4-2-08)
- g.** Incident reports as referred to in Subsections 262.02 and 262.03 of these rules; (4-6-05)
- h.** Court documents and dispositions; (4-6-05)
- i.** Professional correspondence; (4-6-05)
- j.** Clinical notes, which must be kept separate; (4-6-05)
- k.** Medical records, which must be kept separate; (4-6-05)
- l.** Educational records and school history, which must be kept separate; (4-6-05)
- m.** Identifying information and physical descriptions; (4-6-05)
- n.** Last known parent or guardian address and telephone number; (4-6-05)
- o.** Date of admittance and projected release from department custody; (4-6-05)
- p.** A copy of the written reintegration plan; and (4-6-05)
- q.** Records of juvenile offenders' earnings and restitution payments. (4-2-08)
- 02. Confidentiality.** (4-6-05)
 - a.** Sections 20-525 and 9-340(2)(b), Idaho Code, and Idaho Court Administrative Rule 32 provide for confidentiality, under certain conditions, of records that contain information about juvenile offenders. (4-2-08)
 - b.** All matters relating to confidentiality of juvenile offender files shall also comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Chapter 1, Sub-Chapter A, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records." (4-2-08)
 - c.** Restricted clinical information, as defined, and education and medical records must each be filed separately and stored in a secured area. These file folders must be stamped "confidential" on the cover or outside folder. (4-6-05)
 - d.** For contract providers that serve sex offenders, individual treatment assignments, such as journals, detailed sexual histories, must be destroyed at the time the juvenile offender is transferred or released from the program. (4-2-08)
- 03. Automated Records.** Automated records shall include a procedure to ensure confidentiality and be in compliance with any state or federal privacy laws pertaining to those records. The procedure shall also include provisions for backing up automated records. (4-6-05)

04. Policies and Procedures. The contract provider shall have written policies and procedures to address the confidentiality of juvenile offender records. In compliance with HIPAA's privacy regulations, written procedures shall designate a privacy officer who will:

(4-2-08)

a. Supervise the maintenance of identifiable personal health care information; (4-6-05)

b. Serve as custodian of all confidential juvenile offender records; and (4-2-08)

c. Determine to whom records may be released. (4-6-05)

05. Restrictions to Records Access. (4-6-05)

a. Access to personal health information shall be limited to: (4-6-05)

i. Employees of the department and contract providers to the extent necessary to perform normal business functions, including health treatment, and other functions designed to maintain the good order, safety and security of the juvenile offenders or facility; (4-2-08)

ii. Individuals participating in a staffing for a juvenile offender, who have a direct need to know the information, and who are obligated to or promise to maintain the confidentiality of information disclosed. These individuals may include employees or representatives of law enforcement, the department, the contract provider, probation officer, medical or mental health professionals and other appropriate individuals; (4-2-08)

iii. Law enforcement members, emergency medical personnel, the Idaho Department of Health and Welfare and similar court or government officials, as necessary to perform their duties, and only if not otherwise prohibited by state or federal law or rule. (4-6-05)

b. Access to all other confidential juvenile offender records shall be limited to the following authorized persons: (4-2-08)

i. Staff authorized by the contract provider and members of the administrative staff of the contract provider's parent agency; (4-6-05)

ii. A parent or guardian or the juvenile offender, to the extent that disclosure is not privileged and is clinically appropriate; (4-2-08)

iii. Appropriate staff of the department; (4-6-05)

iv. Counsel for the juvenile offender with signed consent form; (4-2-08)

v. Judges, prosecutors, juvenile probation officers, and law enforcement officers, when essential for official business; (4-6-05)

vi. Individuals and agencies approved by the department to conduct research and

evaluation or statistical studies; or (4-6-05)

vii. Schools, as appropriate. (4-6-05)

06. Withholding of Information. If the department or the contract provider believes that information contained in the record would be damaging to the juvenile offender's treatment or rehabilitation, that information may be withheld from the juvenile offender, ~~or his~~ parent, ~~or~~ guardian, or others, except under court order. (4-2-08)()

07. Retention of Juvenile Records. Educational, medical, and drug and alcohol records must be permanently retained. Contract providers shall have a written policy on the retention and disposal of records. At the time of transfer or release from department custody, all case management records must be forwarded to the juvenile offender's juvenile services coordinator. (4-2-08)

08. Requests for Information. Requests for information of any kind about juvenile offenders in department custody, following their release or transfer from a contract provider's program must be directed to the juvenile correctional center in Nampa. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

212. PERSONAL FUNDS.

01. Funds Handled by a Contract Provider. The contract provider will follow accepted accounting practices in managing personal funds of juvenile offenders and in accordance with Section 213 of these rules. (4-2-08)

a. A contract provider shall be required to deposit all personal funds collected for the juvenile offender in a public banking institution in an account specifically designated "Juvenile Personal Funds" and to maintain a reconciled ledger showing each juvenile offender's deposits and withdrawals within the "Juvenile Personal Funds" account. If the funds are collected in an interest bearing account, the interest accrued must be credited to the juvenile offender for whom the funds are collected. In independent living programs, the required personal account may be opened by the juvenile offender and will be maintained by ~~him~~ the juvenile offender as a part of ~~his~~ competency development. (4-2-08)()

b. All withdrawals by a juvenile offender, or expenditures made on behalf of a juvenile offender by the contract provider, shall be documented, signed, and dated by the juvenile offender. This documentation shall be reconciled to the juvenile offender's ledger monthly. (4-2-08)

c. A contract provider may limit the amount of any withdrawal. (4-6-05)

d. A contract provider shall not require juvenile offenders, parents, or guardians to pay for services and supplies that are to be provided by the contract provider, such as clothing,

toiletries, linen, laundry, drug screens, routine supplies, and lunch money, except where juvenile offenders are required to purchase these items as part of an independent living program. (4-2-08)

02. Reporting Requirements. A report shall be filed quarterly with the department's quality assurance staff as part of the report in Subsection 200.02 of these rules. The personal funds report shall show a list of all juvenile offender account balances, date of admission and, if appropriate, the date of transfer or release from department custody. The personal fund account is subject to review and audit by the department or its representatives at any time. Any discrepancies in juvenile offender accounts shall be resolved within fourteen (14) calendar days of notification. (4-2-08)

03. Transfer of Personal Funds. When a juvenile offender is released from department custody or transferred to another program, the balance of the juvenile offender's account shall be given to or mailed to the juvenile offender within five (5) business days and documented on the Contract Provider Juvenile Check-Out Form supplied by the department. (4-2-08)

04. Juvenile Offenders with Earned Income. The contract provider is responsible for maintaining and accounting for any money earned by a juvenile offender. These funds are to be deposited in the personal funds account. Additionally, there shall be a plan for the priority use of the juvenile offender's earned income to pay court ordered restitution and a specific allocation for daily incidental expenses. (4-2-08)

a. The contract provider shall establish a written plan for a juvenile offender in non-independent living programs for the juvenile offender to save at least ten percent (10%) of net earnings. The plan shall specify the purpose for which the funds saved will be used at program completion, such as paying deposits on utilities and housing or the purchasing of tools necessary for employment. (4-2-08)

b. The contract provider shall establish a written plan for a juvenile offender in independent living program, as part of the service implementation plan, for the juvenile offender's use of these funds. The plan shall specify how the funds will be used as part of the independent living program. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

222. POSITION DESCRIPTIONS AND QUALIFICATION CRITERIA.

01. Clinician, Counselor, or Therapist. An individual who conducts a comprehensive assessment of the psychological, behavioral, social, or familial deficits or dysfunctions presented by the juvenile offender, then establishes and implements a plan for therapeutic services. The plan must specify diagnosis and treatment of problems to be addressed, an estimate of the time needed, and a schedule of the frequency and intensity of the services to be provided. The individual may also provide individual, group, or family counseling. At a minimum, the individual must have a master's degree and be currently licensed by the state of

Idaho as a Licensed Professional Counselor (LPC), Licensed Marriage and Family Counselor (LMFT), Licensed Master Social Worker (LMSW), or certified school psychologist. (4-2-08)

02. Juvenile Services Coordinator or Social Worker. An individual who is responsible for the assessment of treatment progress, and the provision and monitoring of therapeutic or rehabilitative treatment services to juvenile offenders participating in a treatment program. Individuals providing this function must possess at a minimum, a bachelor's degree from a fully accredited college or university in social work, psychology, or counseling and must be licensed as a social worker in the state of Idaho. (4-2-08)

03. Recreational Specialist. An individual who develops and implements an individualized and goal-directed recreational plan for a juvenile offender in connection with ~~his~~ the overall service implementation plan. The individual providing this function must possess a bachelor's degree in recreational therapy, health and physical education, or a related field, or have a high school diploma and two (2) years related experience in providing recreational services to juvenile offenders. (~~4-2-08~~)()

04. Rehabilitation Specialist or Case Manager. An individual, under direct supervision, who assists the juvenile offender in implementing ~~his~~ the service implementation plan, evaluates the juvenile offender, and maintains ~~his~~ the case record with respect to all nonclinical matters. The rehabilitation specialist or case manager also assists in presenting the case in staffing, communicates with appropriate individuals, including community interests, regarding the juvenile offender, and prepares written communications, under supervision, including discharge reports. The rehabilitation specialist or case manager may also serve as the social worker if properly licensed in the state of Idaho. Individuals providing this function must possess, at a minimum, a bachelor's degree from a fully accredited college or university in the social sciences or a related field. (~~4-2-08~~)()

05. Rehabilitation Technician or Direct Care Worker. An individual who is responsible for providing individual or group rehabilitative therapeutic services, supervising juvenile offenders' day-to-day living activities and performing such duties as preparing nutritious meals, supervising and training juvenile offenders in basic living skills, and providing some community transportation. Such individual must have a high school diploma or its equivalent. (4-2-08)

06. Special Education Teacher. An individual who provides a modified curriculum for those students who are eligible for services under the IDEA. This individual must hold a valid standard exceptional child certificate with an endorsement as a generalist. (4-2-08)

07. Teacher. An individual who provides basic educational services as required by state and federal statutes. This individual must hold a valid teaching credential in the appropriate instructional field. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

224. GENERAL REQUIREMENTS FOR TRAINING.

01. Training Plan. Training for staff ~~and volunteers~~ shall be conducted in accordance with a written plan approved by management and coordinated by a designated staff member. The training plan shall include: (4-6-05)()

- a. Annual in-service training for all staff to include, but not be limited to: (4-6-05)()
 - i. Identifying and responding to suicide risk; ()
 - ii. Prison Rape Elimination Act and applicable policies and procedures; ()
 - iii. Prohibition of abuse and mandatory reporting of abuse; ()
 - iv. De-escalation of juvenile behavior and appropriate physical restraint techniques; ()
- and
- v. Incident reporting. ()
- b. Those areas of practice and operations requiring a current certification; (4-6-05)()
 - c. Prior to being assigned sole responsibility for supervision of juvenile offenders, rehabilitation technicians or direct care staff shall have training in the following areas: (4-2-08)
 - i. Principles and practices of juvenile care and supervision; (4-6-05)
 - ii. Program goals and objectives; (4-6-05)
 - iii. Juvenile offender rights and grievance procedures; (4-2-08)
 - iv. Procedures and legal requirements concerning the reporting of abuse and critical incidents and compliance with the PREA; (4-2-08)
 - v. Handling of violent juvenile offenders (use of force or crisis intervention); (4-2-08)
 - vi. Security procedures (key control, searches, contraband); (4-6-05)
 - vii. Medical emergency procedures, first aid, and CPR; (4-6-05)
 - viii. Incident reporting; (4-6-05)
 - ix. How to recognize and respond to suicidal behavior; (4-6-05)
 - x. How to access emergency health and mental health care; (4-6-05)
 - xi. Proper storage and dispensing of medications, as well as general signs and

- symptoms of adverse reactions, including identification of the individual who will dispense medications in the facility; (4-6-05)
- xii. Appropriate response to health-related emergencies; (4-6-05)
 - xiii. ~~Training to meet the requirements of federal educational regulations~~ Ethics; and (4-6-05)()
 - xiv. ~~Training on the a~~Appropriate and safe transportation of all juvenile offenders. (4-2-08)()
- d.** In-service training for all first-year staff shall include: (4-6-05)
- i. Program policies and procedures; (4-6-05)
 - ii. Job responsibilities; (4-6-05)
 - iii. Juvenile offender supervision; (4-2-08)
 - iv. Safety and security emergency procedures (fire, disaster, etc.); (4-6-05)
 - v. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPPA); (4-6-05)()
 - vi. Juvenile offender rights and grievance procedures; (4-2-08)
 - vii. Communicable diseases, bloodborne pathogens, and universal precautions; (4-6-05)
 - viii. Behavioral observation, adolescent psychology and child growth and development; (4-6-05)
 - ix. Effective interventions with juvenile offenders including criminogenic risk and need factors; (4-2-08)
 - x. Juvenile Corrections Act, balanced and restorative justice, and department rules for contract providers; (4-6-05)
 - xi. Basic security procedures; (4-6-05)
 - xii. Signs and symptoms of chemical use or dependency; (4-6-05)
 - xiii. Drug-free workplace; ~~and~~ (4-6-05)()
 - xiv. Diversity training to include cultural awareness; and (4-6-05)()
 - xv. Juvenile offender pat-down searches and visual inspections for contraband. ()

02. Minimum Mandatory Staff Training Requirements. Good professional practice in the area of juvenile offender treatment requires staff to be competently trained. Therefore, all staff is required to have: (4-2-08)

a. Eighty (80) hours of training for all staff during first year of employment. Up to twenty-five percent (25%) of the eighty (80) hours may be fulfilled by working with an experienced staff mentor, who must verify and document basic competencies for new staff; and (4-6-05)

b. Forty (40) hours of training per year following the first year of employment. (4-6-05)

03. Trainer Qualifications. (4-6-05)

a. Individuals who provide instruction in areas of life, health, and safety, including but not limited to, first aid, CPR, physical intervention techniques, shall have appropriate certification which must be documented in their personnel or training file. (4-6-05)

b. Individuals who provide instruction in treatment shall have appropriate training, education, and experience which must be documented in their personnel or training file. (4-6-05)

04. Documentation of Training. Staff training records shall be kept by a designated staff person. Separate training records shall be established for each staff member and volunteer and shall include: (4-6-05)

a. Name; (4-6-05)

b. Job title; (4-6-05)

c. Employment beginning date; (4-6-05)

d. Annual training hours required; and (4-6-05)

e. A current chronological listing of all training completed. (4-6-05)

05. Training Records. Training records may be kept separately within each individual personnel file or in a separate training file. Copies of curriculum materials must be maintained. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

226. VOLUNTEER PLAN.

01. Written Plan. Programs that utilize volunteers regularly shall have a written plan that includes stipulations for their use and training. Training provided must include all of the

information necessary for the volunteers to successfully perform their roles within the program. (4-6-05)

02. Recruitment. Recruiting of volunteers is conducted by the chief administrative officer or designee. Recruitment is encouraged from all cultural and socio-economic segments of the community. (4-6-05)

03. Volunteer Requirements. (4-6-05)

a. Volunteers must be at least twenty-one (21) years of age, of good character, and sufficiently mature to handle the responsibilities involved in the position; (4-6-05)

b. Volunteers must complete an application for the position and be suited for the position to which they are assigned; (4-6-05)

c. Volunteers must agree in writing to abide by all program policies; (4-6-05)

d. Volunteers who perform professional services must be licensed or certified as required by state law or rule; (4-6-05)

e. Written job descriptions must be provided for each volunteer position; and (4-6-05)

f. Volunteers must agree to background and criminal record checks as prescribed by state law. (4-6-05)

g. Minimum training for volunteers must include the following: ()

i. Program goals and objectives; ()

ii. The role of the volunteer and job duties; ()

iii. Volunteer's role in reporting incidents of sexual misconduct under PREA; ()

iv. Basic security procedures; ()

v. Recognizing suicidal behaviors; ()

vi. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and ()

vii. Ethics and mandatory reporting of juvenile abuse. ()

04. Supervision. Volunteers will be supervised by a paid employee of the contract provider. This individual shall coordinate and direct the activities of the volunteer. Volunteer performance shall be evaluated periodically and evidence of this evaluation be made part of the personnel record of the volunteer. (4-6-05)

05. Documentation. Contract provider shall maintain individual personnel files for each volunteer working in the program. The files shall contain all documentation as described in Subsection 226.03 of these rules. (4-6-05)

06. Termination. There will be a procedure established for the termination of volunteers when substantial reasons for doing so exist. (4-6-05)

227. INTERNS.

Programs should consider involving interns to enhance and expand their services. However, interns recruited to supplement and enrich a program, may not be substituted for the activities and functions of facility staff. Interns shall not be assigned sole supervision of juvenile offenders. (4-2-08)

01. Written Plan. Programs that utilize interns regularly shall have a written plan that includes stipulations for their use and training. Training provided must include all of the information necessary for the interns to successfully perform their roles within the program. (4-6-05)

02. Intern Requirements. (4-6-05)

a. Interns must be documented to be enrolled in an accredited school or program for the profession, must be at least twenty-one (21) years of age, of good character, and sufficiently mature to handle the responsibilities involved in the position; (4-6-05)

b. Interns must have a fully developed internship or practicum agreement which details their activities for the period, and relates these to learning objectives developed with the academic institution and program in which they are enrolled. The internship agreement must include the signatures of the intern, supervising contract provider staff, and a representative of the academic institution in which the intern is enrolled. (4-6-05)

c. Interns must agree in writing to abide by all policies and standards of conduct, and must agree to meet the ethical standards for the profession for which they are training; (4-6-05)

d. Interns who perform professional services must be licensed or certified as required by state law or rule, or must be documented to be supervised directly by staff meeting those credentials; (4-6-05)

e. Interns must agree to background and criminal record checks as prescribed by state law. (4-6-05)

f. Minimum training for interns must include the following: ()

i. Program goals and objectives; ()

ii. The role of the intern and duties related to the learning plan; ()

iii. Intern's role in reporting incidents of sexual misconduct under PREA; ()

- iv. Basic security procedures; ()
- v. Recognizing suicidal behaviors; ()
- vi. Confidentiality issues including the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and ()
- vii. Ethics and mandatory reporting of juvenile abuse. ()

03. Supervision. An intern will be supervised by a paid employee of the contract provider who has the licenses and credentials required by state law and who has been accepted by the intern's school as an appropriate supervisor for the discipline of instruction. This individual shall coordinate and direct the activities of the intern. Intern performance shall be evaluated periodically and evidence of this evaluation made part of the work record of the intern. (4-6-05)

04. Documentation. Contract provider shall maintain individual personnel files for each intern working in the program. The files shall contain all documentation as described in Subsection 227.02 of these rules. (4-6-05)

05. Termination. There will be a procedure established for the termination of interns when substantial reasons for doing so exist. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

240. JUVENILE OFFENDER RIGHTS AND RESPONSIBILITIES.

01. Contract Provider Obligations. The contract provider must observe, and not infringe upon, the rights of each juvenile offender in its facility or program. The contract provider shall also be responsible for understanding the rights and responsibilities of juveniles in custody, and knowing which rights have been forfeited as a result of being placed in custody. (4-2-08)

02. Religious Services and Special Needs. ~~Each~~ The juvenile offender and ~~his~~ family will be advised in writing of the obligation of the contract provider to allow access to appropriate religious services, and to make reasonable accommodations for any disabilities, language barriers, or other special needs. A signed copy of this notice shall be placed in the juvenile offender's file. (4-2-08)()

03. Juvenile Offender Program Responsibilities. The contract provider shall inform each juvenile offender, upon admission to its program, of ~~his~~ each juvenile offender's responsibilities during the program. Additionally, each juvenile offender shall have an understanding of the following program expectations: (4-2-08)()

- a. Requirements needed to complete program; (4-6-05)
- b. How to access medical services; (4-6-05)

- c. How to file a grievance; (4-2-08)
- d. How to report incidents of sexual misconduct between juvenile offenders or between staff and juvenile offenders; and (4-2-08)
- e. How to contact ~~his~~ the juvenile services coordinator and juvenile probation officer. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

243. APPEAL OF FORMAL DISCIPLINARY PENALTIES.

Each contract provider shall have a formal written process through which a juvenile offender can appeal a disciplinary action and receive a review of ~~his~~ the case. The contract provider shall explain to the juvenile offender how to use the appeal process. The juvenile offender must be informed that ~~in any event he may include his~~ the juvenile services coordinator may be included in the disciplinary process at the juvenile's choice. (4-2-08)()

244. ROOM RESTRICTIONS.

The contract provider shall have written policies and procedures regulating the use of the juvenile offender's room for "room restriction." The policy shall ensure that there are procedures for recording each incident involving the use of restriction. The reason for the room restriction shall be explained to the juvenile offender ~~and he~~ who shall have an opportunity to explain the behavior. Other less restrictive measures must have been applied prior to the room restrictions. A juvenile offender in room restriction shall have access to the bathroom. Staff shall check on a juvenile offender in room restriction a minimum of once every fifteen (15) minutes. Room restriction may only be used in an unlocked area. Room restriction shall not exceed a total of eight (8) hours within a twenty-four (24) hour period. Contract providers must ensure that a juvenile offender with a history of depression or suicidal ideation and those who have exhibited these behaviors while in care, are checked at least every five (5) minutes in order to ensure ~~his~~ safety. Even more frequent or constant observation must be maintained if any level of suicide risk is determined to be present at any time during room restriction. All items in the area that might be used to attempt self-harm should be restricted or removed. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

251. VISITATION.

The contract provider shall develop written rules governing visiting at the facility and shall provide a copy to each juvenile offender, ~~his~~ parent or guardian, and the juvenile services coordinator. Visitation policy must include specific restrictions on those under the influence of alcohol or drugs. In all cases, the contract provider will work with the juvenile services coordinator and juvenile probation officer to identify and approve potential visitors in accordance

with the contract provider's criteria. The contract provider is responsible for developing and implementing policy concerning visitation which protects the safety of visitors, staff, and juvenile offenders. This may restrict visitation below an established age or provide for higher levels of supervision in circumstances where safety may be at risk. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

261. PROGRAM POLICY REQUIREMENTS.

01. Written Policies. Programs must have, at a minimum, the following written policies concerning program operations available at the program site. (4-6-05)

a. Program elements and implementation. (4-6-05)

b. Admission policy describing the target population and criteria for admission, and identifying sources of referrals to the program. (4-6-05)

c. Criteria for assigning juvenile offenders to different units within the program, if applicable. (4-2-08)

d. The provision of (or referral for) emergency and routine health and mental health services for the population. (4-6-05)

e. The prevention and monitoring of suicidal behavior. The policy at a minimum shall require that: (4-6-05)

i. A suicide risk screening be completed within no more than two (2) hours of a juvenile offender's admission into a facility. The screening is done to identify an immediate threat of suicide or self-harm and the need for a suicide risk assessment. Further, the screening is a system of structured and documented observation, interview and review of behavioral, medical, and mental health information. (4-2-08)

ii. A suicide risk assessment, if appropriate, be completed by a mental health professional for the purpose of determining the level of immediate risk of a juvenile offender attempting suicide. A suicide risk assessment is a system of structured and documented observation, interview and review of behavioral and mental health information. It comprises a thorough review of recent behavioral and mental health information, interviews of staff and the juvenile offender concerning the behavior that seems to present the threat of self-harm or suicide and the development and dissemination of a safety plan to address the risk as it is determined to exist. A suicide risk assessment typically involves an assessment of the juvenile offender's determination to act on ~~his~~ intentions of self-harm, a determination of the depth of ~~his~~ planning for making the attempt, the availability of the items or situations necessary for him to act on that plan and the lethality of the plan as expressed. Reassessment of suicide risk is made at a time determined by the mental health professional completing the assessment and is ideally completed by that same mental health professional. (4-2-08)()

- f.** Behavior management within the program, including use of points and levels, restraints, separation, detention and other types of special management. (4-6-05)
- g.** Supervision of juvenile offenders policy shall include managing juvenile offender movement within the program, including the timely transfer of behavioral information about juvenile offenders from staff at shift change. (4-2-08)
- h.** Juvenile offenders' access to the community policy shall include use of community schools or job sites, and individual or group activities away from the program site. For residential programs, this also includes individual community passes. (4-2-08)
- i.** Provision of educational and vocational services. (4-6-05)
- j.** Administrative coverage in emergency situations, after regular work hours (residential only). (4-6-05)
- k.** Documentation and reporting of critical incidents to program administrators, the department and others on the community treatment team. (4-6-05)
- l.** Treatment planning and progress reporting to the department, juvenile offender, family and others on the community treatment team. (4-2-08)
- m.** Reintegration policy shall describe criteria for successful completion of program, termination from program prior to completion, and the involvement of the department and community treatment team. (4-2-08)
- n.** Grievances. (4-6-05)
- o.** Visitation. (4-6-05)
- p.** Correspondence, including telephone and mail. (4-6-05)
- q.** Emergency procedures in the event of a natural disaster. (4-6-05)
- r.** Searches of staff and visitors. (4-6-05)
- s.** Contract providers shall have written policies and procedures prohibiting the sexual contact by any employee with a juvenile offender. (4-2-08)
- t.** Contract providers, in accordance with the PREA, shall have written policies and procedures that promote zero tolerance toward sexual misconduct with or among juvenile offenders in their care and zero tolerance toward the sexual assault of juvenile offenders by staff or by other juvenile offenders. (4-2-08)
- 02. Documented Staff Training.** Documented staff training on these policies must also be available for review by the department. (4-6-05)

262. PROGRAM OPERATIONAL REQUIREMENTS AND CASE MANAGEMENT.

01. General Requirements. (4-6-05)

a. Programs should provide vigorous programming that minimizes periods of idle time, addresses behavioral problems of juvenile offenders, and teaches and promotes healthy life choices. Programs should specifically address those factors in juvenile offenders' lives that contribute to delinquency and that can be realistically changed. (4-2-08)

b. Programs must be open to the community by encouraging appropriate telephone and mail contact between juvenile offenders and their families, by encouraging visitation, and by involving volunteers in support of the program. (4-2-08)

c. Contract providers must structure and document services offered in the program so that continuity in case planning is obvious. Health, mental health, substance abuse, social skills, educational, vocational, independent living, and other special needs identified in the assessment must be clearly addressed in the service implementation plan. Services provided to address those needs must be documented regularly. Progress on goals associated with those needs must be recorded in progress notes in a case file at least monthly and in a written progress report at least every two (2) months. Service needs remaining at the time of release from department custody or transfer must be accounted for in the reintegration plan for each juvenile offender. (4-2-08)

d. Without authorization from the Idaho Department of Health and Welfare and the department, a residential care contract provider shall not admit more juveniles into care than the number specified on the provider's license. Contract providers wishing to increase capacity are responsible for contacting the Idaho Department of Health and Welfare. A copy of the written confirmation to the contract provider from the Idaho Department of Health and Welfare for verbal approval to exceed the licensed capacity shall be forwarded to the department's clinical supervisor in the region and to the department's quality assurance staff. (4-6-05)

e. Programs may not, under any circumstances, involve juvenile offenders in plethysmographic assessments. The use of polygraphs for juvenile offenders adjudicated for or documented to have demonstrated sexually abusive behavior, shall only be undertaken by court order or with the specific written authorization of the department's regional clinical supervisor, and then only with the full, informed consent of the juvenile offender, and if ~~he~~ the juvenile offender is a minor, ~~his~~ parent or guardian. Contract providers shall not make treatment decisions solely on the results of a polygraph. Polygraphers used in this process must be able to provide documentation of specific training in the use of polygraphy with sexually abusive juvenile offenders. (4-2-08)()

02. Incidents Requiring Immediate Notice. All notifications under this Section shall be made to the regional facility in the region where the contract provider is located. Out-of-state contract providers shall notify the Region 2 facility. Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. If any of the following events occur, the contract provider must immediately notify the juvenile offender's parent or guardian, juvenile services coordinator, juvenile probation officer, and the department's regional ~~state~~ facility by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24)

hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile. Transmission may be electronic or by facsimile. (4-2-08)()

a. Health and mental health emergencies including, but not limited to, every instance of emergency room access or refusal of medications or treatment recommended by a physician; (4-6-05)()

b. Major incidents such as death of a juvenile offender, suicide, attempted suicide or threat of suicide, attempted escape, sexual misconduct among juvenile offenders or by staff including, but not limited to, incidents reportable under PREA, criminal activity resulting in arrest, detention, or filing a report with local law enforcement, or any relevant report made to the Idaho Department of Health and Welfare; (4-2-08)()

c. Any incident of restraint which involves the use of medications, chemicals, or mechanical devices of any kind; (4-6-05)

d. Any use of separation or isolation for more than two (2) hours; (4-6-05)

e. Incidents of alleged or suspected abuse or neglect of juvenile offenders; and (4-2-08)

f. Incidents involving the disclosure of criminal behavior by juvenile offenders. (4-2-08)

g. The following incidents or activities jeopardize the safe operation of the facility and require the completion of a detailed incident report: ()

i. Instances of physical assault or fighting; ()

ii. Major misconduct by one (1) or more juvenile offenders or staff; ()

iii. Discovery of contraband that represents an immediate threat to safety and security, such as weapons or drugs; and ()

iv. Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters. ()

03. Escapes Also Require Immediate Notice. In all instances of escape, the contract provider must immediately notify the juvenile correctional center in Nampa first, followed by the regional ~~state~~ facility, juvenile offender's parent or guardian, juvenile services coordinator, and juvenile probation officer by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile offender. Transmission may be electronic or by facsimile. Upon apprehension, all of the same parties must be notified immediately. (4-2-08)()

a. Clothing and other personal belongings shall be secured immediately and maintained in a secure place until returned to the department. (4-6-05)

b. The contract provider shall not transfer a juvenile offender at the time of an escape. The juvenile offender shall continue to be assigned to the program, although not physically present for up to forty-eight (48) hours. The program will be reimbursed for the days the juvenile offender was on escape status up to forty-eight (48) hours. Should the program choose to transfer the juvenile offender after ~~his~~ returning, then the procedures outlined in Subsections 276.04 and 276.08, of these rules, shall apply. If the juvenile offender is apprehended, the contract provider ~~should~~ shall contact the juvenile services coordinator to plan for transfer of the juvenile offender to a regional facility for an updated assessment and for a placement decision. (~~4-2-08~~)()

04. Incidents Not Requiring Immediate Notice to Parents. ()

a. Any use of separation or isolation for more than two (2) hours; ()

b. Incidents involving the disclosure of criminal behavior by juvenile offenders. ()

c. The following incidents or activities jeopardize the safe operation of the facility and require the completion of a detailed incident report: ()

i. Instances of physical assault or fighting; ()

ii. Instances of lost keys, equipment, vehicles, or tools; ()

iii. Major misconduct by one (1) or more juvenile offenders or staff; ()

iv. Discovery of contraband such as weapons or drugs; and ()

v. Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters. ()

045. Incidents ~~Not~~ Requiring ~~Immediate~~ Notice Within Ten Days. (~~4-6-05~~)()

a. Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. A copy of the completed incident report must be submitted to the juvenile services coordinator no later than ten (10) business days after the incident. (4-6-05)

~~**b.** A detailed incident report is required for each incident or activity which jeopardizes the safe operation of the facility. This would include but not be limited to:~~ (~~4-2-08~~)

~~**i.** Instances of physical assault or fighting;~~ (~~4-2-08~~)

~~**ii.** Instances of lost keys or tools;~~ (~~4-2-08~~)

~~**iii.** Major misconduct by one (1) or more juvenile offenders or staff;~~ (~~4-2-08~~)

- ~~iv. Discovery of contraband such as weapons or drugs; and (4-2-08)~~
- ~~v. Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters. (4-2-08)~~

eb. A detailed incident report is also required for each incident of ~~staff or~~ juvenile offender misconduct that is not reportable under Subsection 262.02 and results in any type of: (4-2-08)()

- i. Any minor ~~in~~injury; (4-6-05)()
- ii. Any ~~physical~~ physical restraint that does not involve the use of medications, chemicals, or mechanical devices of any kind; (4-6-05)()
- ~~iii. Suspension; (4-6-05)~~
- ~~iv. Termination of work; (4-6-05)~~
- ~~viii. Refusal of ~~program~~ program participation; or (4-6-05)()~~
- ~~vi. Separation, isolation, or room confinement for less than two (2) hours; (4-6-05)()~~
- ~~vii. Detention; or (4-6-05)~~
- ~~viii. Arrest of a juvenile offender. (4-2-08)~~

c. A detailed incident report is also required for each incident of staff misconduct relating to juvenile care that is not reportable under Subsection 262.02 and results in any type of: ()

- i. Suspension from work; ()
- ii. Termination of work; ()
- iii. Revocation or suspension of professional license; or ()
- iv. Revocation or suspension of driver's license of any staff transporting juveniles. ()

056. Incident Report Content. Contract providers may elect to use the department's standard incident report form or may use another form as long as all of the following information is included: (4-6-05)

- a. Juvenile offender's assigned unit; (4-2-08)
- b. Date, location, and time of the incident; (4-2-08)

- c. Witnesses and other staff and juvenile offenders involved; (4-2-08)
- d. Persons notified with date and time of notice; (4-6-05)
- e. Type of incident by category, such as assault on staff, assault on juvenile offender, injury or illness, property damage, contraband, suicide attempt or threat, escape or attempted escape, or other misconduct; (4-2-08)
- f. Action taken by category, such as physical restraint, separation, isolation, or room confinement with times in and out, suicide precautions, or escape precautions initiated; (4-6-05)
- g. Brief narrative description of the incident; (4-6-05)
- h. Signature of staff and reviewing supervisor, which may be affixed electronically;
(~~4-2-08~~)()
- i. Documentation of injury and medical attention provided; and (4-2-08)
- j. If the incident involves sexual misconduct, the incident report must include a description of action taken to:
 - i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality; (4-2-08)
 - ii. Address any immediate trauma, either physical or emotional; (4-2-08)
 - iii. Address long-term medical or mental health needs related to the alleged abuse; (4-2-08)
 - iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; (4-2-08)
 - v. Conduct an internal investigation of the incident and as necessary request that an external investigation be completed; and (4-2-08)
 - vi. Prevent repetition of the abusive situation. (4-2-08)

067. Monitoring the Location of Juvenile Offenders. The contract provider must have and strictly follow a comprehensive policy covering the supervision of juvenile offenders, including a plan for monitoring all movement of those juvenile offenders both in the facility and, as appropriate, within the community. Staff at the facility must be aware of the location of every juvenile offender assigned to that program at all times. (4-2-08)

078. Nonresidential Absences. Nonresidential programs shall make reasonable efforts to ensure that the juvenile offenders attend their program daily or as otherwise specified in the service implementation plan. The nonresidential program shall inform the juvenile services coordinator of daily attendance and all attendance problems. This information must be

documented in at least monthly progress notes and must be reported in written progress reports every two (2) months. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

265. SEARCHES OF PERSONAL ITEMS.

Routine searches of suitcases or personal items being introduced into the facility will be conducted by facility staff prior to ~~the~~ juvenile offenders taking possession of ~~his~~ their property, or when the juvenile offender is returning to the facility from an individual community pass. Search of a juvenile offender's belongings may be done at any time and shall be minimally intrusive. All searches shall be documented in the facility log and, if contraband is found, a written incident report must be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. (4-2-08)()

266. JUVENILE OFFENDER PAT DOWN SEARCHES AND VISUAL INSPECTIONS FOR CONTRABAND.

01. Necessity. Pat down searches and visual inspections of juvenile offenders may be conducted whenever the contract provider believes it is necessary to discourage the introduction of contraband into the facility, or to promote the safety of staff, juvenile offenders, and visitors. A pat down search or visual inspections may be used when a juvenile offender is returning from a visit, or outside appointment, or activity. (4-2-08)()

02. Pat Down Searches. Pat down searches shall be conducted in the manner required by the ~~child care licensing~~ rules of the Idaho Department of Health and Welfare under IDAPA 16.06.02, "Standards for Child Care Licensing." Pat down searches of juvenile offenders will be conducted by staff of the same gender as the juvenile offender. Pat down searches will be conducted using the quadrant search method that consists of dividing the juvenile's body in four (4) quadrants and conducting a pat down search outside the juvenile's clothing on each quadrant. The staff member must have had appropriate training in conducting pat down searches. (4-6-05)()

03. Visual Inspections. Body cavity searches of juveniles will not be performed by staff, interns, or volunteers under any circumstances. Looking into a juvenile's mouth does not constitute a body cavity search. Visual inspections beyond those performed during an initial search using the quadrant method may only be performed by staff with appropriate training. Visual inspection must be based upon a reasonable belief that the juvenile is concealing contraband. ()

034. Documentation. All pat down searches and visual inspections shall be documented in the facility log. A written report shall be completed when contraband is found and shall be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified. (4-6-05)()

267. JUVENILE OFFENDER STRIP SEARCHES PROHIBITED.

Strip searches of juveniles by staff, interns, or volunteers will not be performed under any circumstances. ()

~~**01. Reasonable Suspicion.** Strip searches may be performed by facility staff, only after a pat down search, whenever there is reasonable suspicion to believe that weapons or contraband may be found through additional searches. Strip searches shall be authorized by the facility director or designee and conducted strictly in the manner required by the child care licensing rules of the Idaho Department of Health and Welfare.~~ (4-6-05)

~~**02. Documentation.** All strip searches shall be documented in the facility log. A written report shall be completed when contraband is found and shall be submitted to the juvenile services coordinator. If necessary, the appropriate law enforcement agency shall be notified.~~ (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

269. USE OF FORCE OR PHYSICAL RESTRAINTS.

Contract providers, licensed by the Idaho Department of Health and Welfare, must ensure that all terms of the child care licensing rules of the Idaho Department of Health and Welfare are strictly followed. Additionally, licensed and non-licensed contract providers must ensure that: (4-2-08)

01. Minimal Use. Only the minimum level of force necessary to control a juvenile offender's destructive behavior shall be used. (4-2-08)

02. Physical Force. Physical force, at any level, may only be used to prevent injury to the juvenile offender or to others and to prevent serious damage to property or escape. Physical force shall never be used as punishment. (4-2-08)

03. Reporting Requirement. All instances of use of force must be documented in an incident report and submitted according to the terms of Subsection 262.02 and 262.04 of these rules. Incidents of inappropriate use of force must be reported to the Idaho Department of Health and Welfare, or law enforcement as required by law. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

271. ONGOING TREATMENT AND CASE MANAGEMENT.

~~The~~ Juvenile offenders must always be aware of the status of ~~his~~ their progress within the program and what remains to be done to complete the program. Contract providers must assure that the basic norms and expectations of the program are clearly presented to the juvenile offender and that they are understood. Any points, levels or phases that are a fundamental part of a program must be clearly understood by the juvenile offender in the program. Each juvenile offender's progress, or lack of progress, through these levels must be clearly documented and

must be related to documented behavior. Recommendations for release from department custody or transfer should be substantiated by a documented pattern of behavioral change over a period of time. Recommendations for transfer to a higher level of custody must be substantiated by a documented lack of progress over time, or by a serious or violent incident which threatens the safety of others or the stability of the overall program. (4-2-08)()

01. Service Implementation Plan. Within thirty (30) calendar days of the juvenile offender's admission into the program, a written service implementation plan must be developed. The service implementation plan must address the specific goals identified in the service plan from the observation and assessment report. The service implementation plan should, at a minimum, address the following areas as indicated by need: (4-2-08)

- a. Health; (4-6-05)
- b. Mental health; (4-6-05)
- c. Substance abuse; (4-6-05)
- d. Social skills; (4-6-05)
- e. Education; (4-6-05)
- f. Vocations; (4-6-05)
- g. Independent living; (4-6-05)
- h. Other special needs; (4-2-08)
- i. Progress notes from the initial period of placement in the program; and (4-2-08)
- j. Reintegration plan. (4-2-08)

02. Family Involvement. Each juvenile offender and, to the fullest extent possible, the family should be involved in developing the service implementation plan, and in adjusting that plan throughout the course of commitment. (4-2-08)

03. Department Assessments. Assessments provided by the department shall not be repeated by the contract provider at the time of admission into the program without specific justification provided to the regional clinical supervisor. (4-6-05)

04. Service Implementation Plan Adjustments. The service implementation plan should be adjusted throughout placement with the concurrence of the juvenile services coordinator following communication with the community treatment team. Specifically, the service implementation plan should be adjusted as new needs are identified, as goals are achieved, and as plans for reintegration are finalized. (4-6-05)

05. Progress Notes. Monthly progress notes must be filed recording each juvenile offender's progress toward completing the service implementation plan. (4-2-08)

06. Education Plan. A copy of the juvenile offender's education plan shall be a component of the service implementation plan. This education plan shall include the juvenile offender's course of study (GED, secondary, post-secondary, etc.), long-term educational goals and short-term objectives, and shall comply with all state and federal laws. If the juvenile offender has been identified as eligible to receive services under Section 504 of the federal Rehabilitation Act of 1973 (Section 504) or the federal IDEA, a copy of the IEP, and supporting documentation shall be sent to the department's education manager at the juvenile correctional center in Nampa within ten (10) days from development. The education plan shall be updated and submitted yearly. Written educational progress (report cards) shall be submitted to the department's education manager at the juvenile correctional center in Nampa at the end of each school's grading period, e.g. quarter, semester, trimester, etc. (4-2-08)

a. Contract providers may choose to utilize the department's software program provided by the department for managing special education students' paperwork. (4-2-08)

b. If this option is selected, an e-mail to the education records manager at the juvenile correctional center in Nampa will be required stating that the required documents have been completed in the software program. It will not be necessary to mail hard copies of the documents. (4-2-08)

07. Progress Report. The progress report should focus on areas of positive change in behavior and attitudes, as well as on the factors required for a successful program completion (progress in community protection, competency development, and accountability). Areas of need that were included in the service implementation plan and identified in Subsection 271.01, of these rules, should also be referenced in the progress report. Each progress report should also note any changes or further development of the reintegration plan and should detail the level of involvement of the parent or guardian in treatment. A written progress report must be submitted to the juvenile services coordinator at least every two (2) months. (4-6-05)

08. Report Distribution. Copies of the progress report shall be distributed by the contract provider to the juvenile offender and the juvenile services coordinator. The juvenile services coordinator will review and forward the progress report to the juvenile probation officer, appropriate court, and parent or guardian, unless the juvenile offender's family has been excluded from treatment by the juvenile services coordinator and the respective clinical supervisor for some well documented reason. (4-2-08)

272. INDIVIDUAL COMMUNITY PASSES.

Prior to granting any individual community pass to a juvenile offender, the contract provider shall contact the juvenile probation officer and the juvenile services coordinator to ensure that neither the court nor the department has placed restrictions on the juvenile offender's pass privileges. All requests for passes must be approved by the juvenile services coordinator. Any pass involving an overnight stay away from the facility, or involving special circumstances such as a sexual victim in the home, requires a written plan detailing supervision and safety measures to be taken, an itinerary for the visit, transportation plan, and must be approved in writing five (5) business days in advance by the juvenile services coordinator. Each time a juvenile offender leaves on and returns from an individual community pass, the contract provider must notify the juvenile correctional center in Nampa of this movement, promptly at the time that the juvenile offender

leaves and ~~at the time he~~ returns.

(4-2-08)()

01. Potential Risk to Public Safety. All passes for juvenile offenders assigned to residential facilities should be considered as an integral part of the service implementation plan. However, in all cases, the potential risk to public safety and adequacy of home supervision shall be considered prior to allowing a juvenile offender to return home. It is also important that passes not interfere with the ongoing treatment and supervision needed by juvenile offenders. Contract providers must provide parents or guardians with clearly written guidelines for approved passes, which must be signed by parents or guardians indicating their understanding and willingness to comply with those guidelines. The department's pass form may be used for this purpose. If the department's form is not used, the form signed and agreed to by the individual assuming responsibility for supervision, the pass must contain at least the following information: (4-2-08)

- a. The juvenile offender's name and date of birth; (4-2-08)
- b. The name, address and telephone number of the individual assuming responsibility; (4-6-05)
- c. Authorized days, dates and times for the pass, including the specific date and time of departure and of return; (4-6-05)
- d. A complete listing of the anticipated locations and activities in which the juvenile offender is expected to be involved; (4-2-08)
- e. Specific plans for supervision and telephone checks to verify compliance with the pass conditions; (4-6-05)
- f. A complete listing of the activities required during the pass; (4-6-05)
- g. Specific stipulations prohibiting: (4-6-05)
 - i. The use of alcohol, tobacco, and drugs; (4-6-05)
 - ii. Involvement in any illegal activity, or association with others who may be or have been involved in illegal behavior; (4-6-05)
 - iii. Participation in sexual relations of any kind; (4-6-05)
 - iv. Possession of any kind of firearm or weapon; (4-6-05)
 - v. Any violation of the terms of probation; and (4-6-05)
- h. Specific stipulations about search and drug testing upon return, and the possible consequences for violation of any of the terms of the pass agreement. (4-6-05)

02. Eligibility. A juvenile offender must be in placement a minimum of thirty (30) calendar days ~~before he is to be~~ eligible for any pass. Any exceptions due to extenuating circumstances must be approved by the juvenile services coordinator. (4-2-08)()

03. Frequency. Frequency of passes shall be consistent with the terms of the juvenile offender's service implementation plan and contract provider's contract with the department. (4-2-08)

04. Documentation. Documentation of the exact date and time of the juvenile offender's departure from the program for a pass, and ~~his~~ return, must be maintained along with complete information about the individual assuming physical custody, transportation, and supervision during the pass. (~~4-2-08~~)()

273. GROUP ACTIVITIES OFF FACILITY GROUNDS.

An activity plan and itinerary covering activities to be engaged in, when and where the group is going, how they will travel, how long they will stay, and why the activity is being planned must be submitted to the juvenile services coordinator at least five (5) business days prior to the activity. The activity plan must identify the specific risk elements associated with the activity and provide a safety plan for each of those risk elements. Routine, low risk activities within the local community adjacent to the facility do not require prior notice, and are to be conducted at the discretion of and under the responsibility of the contract provider. (4-6-05)

01. Recreational Activities. A pass authorizing the participation of juvenile offenders in outdoor recreational or work activities with an increased risk, such as overnight trips, must be signed by the juvenile services coordinator and juvenile probation officer prior to the activity. Any proposed activity that involves rafting, horseback riding, boating, rappelling, rock climbing, or higher risk activity must also have the prior approval, in writing, of the clinical services administrator. (~~4-2-08~~)()

02. Staff Requirements. (4-6-05)

a. A basic first aid kit and current Red Cross First Aid Manual will be taken with the group. At least one (1) person certified in first aid and CPR shall accompany the group. (4-6-05)

b. Swimming, boating, or rafting will only be allowed when a staff in attendance has certification in basic rescue and water safety, water safety instruction, or Red Cross life saving. All juvenile offenders involved in boating or rafting activities must wear an approved personal flotation device. (4-2-08)

c. A staff to juvenile offender ratio of one to six (1:6) will be adhered to as a minimum unless there is a reason to require more staff. The risk level of the activity, as well as any physical disabilities, high client irresponsibility, mental deficiencies, or inclusion of groups of juvenile offenders under age twelve (12), are some reasons to consider additional staff. (4-2-08)

d. All participants will be recorded in the activity plan and identified as program clients, staff, or volunteers. The individual staff or volunteer satisfying the above first aid and CPR requirements must be identified in the plan. (4-6-05)

03. Consent Forms. Recreational activities identified as presenting a higher risk require prior written approval in accordance with Subsection 273.01 of these rules. Each juvenile offender must have prior written consent from a parent or guardian, if available, and the clinical

services administrator. Consent shall include: (4-2-08)

- a.** Permission for the juvenile offender's participation; (4-2-08)
- b.** Acknowledgement of planned activities; and (4-6-05)
- c.** Permission for the contract provider to seek or administer necessary medical attention in an emergency. (4-6-05)

04. Consumption. There will be no consumption of alcoholic beverages or illicit drugs by staff or juvenile offenders or volunteers while engaged in any agency-sponsored trip or activity. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

278. GUIDELINES FOR SPECIFIC SERVICES.

- 01. Counseling Services.** (4-6-05)
 - a.** All counseling services provided to juvenile offenders, whether individual, group or family, must be performed by a clinician, counselor, or therapist as defined in these rules. (4-2-08)
 - b.** Counseling should be planned and goal directed. (4-6-05)
 - c.** Notes must be written for each service provided. The notes must be dated, clearly labeled either individual, group or family counseling, and each entry must be signed by the clinician, counselor, or therapist performing the service. (4-6-05)
 - d.** The methods and techniques applied in counseling and the frequency and intensity of the sessions should be determined by assessment. (4-6-05)
 - e.** Counseling should be reality oriented and directed toward helping juvenile offenders understand and solve specific problems; discontinue inappropriate, damaging, destructive or dangerous behaviors; and fulfill individual needs. (4-2-08)
 - f.** The minimum standard for the frequency of counseling services shall be specified in the comprehensive program description attached to the contract with the department. (4-6-05)
 - g.** There should be a mechanism developed to monitor and record incremental progress toward the desired outcome of counseling services. (4-6-05)
 - h.** Programs should be able to demonstrate that counseling interventions are shared in general with other program service providers, and there is broad mutual support for the goals of counseling in all service areas of the program. (4-6-05)

i. Programs must provide crisis intervention counseling if warranted by the assessment and circumstances. (4-6-05)

j. The contract provider must furnish adequate space for conducting private interviews and counseling sessions at the facility. (4-6-05)

k. Family counseling services must be available as a part of the juvenile offender's service implementation plan, to the extent that this is supported by the assessment. If the assessment indicates a need for these services, family counseling should specifically address issues that, directly or indirectly, resulted in the juvenile offender's removal from ~~his~~ the home and the issue of ~~his~~ eventual reintegration back into the family unit. A statement of goals to be achieved or worked toward by the juvenile offender and ~~his~~ the family should be part of the service implementation plan. (~~4-2-08~~)()

02. Substance Abuse Treatment Services. As a minimum standard, programs must provide substance abuse education for all juvenile offenders, and substance abuse treatment services as determined by assessment and indicated in the service implementation plan. Substance abuse treatment services must have direct oversight by a certified alcohol and drug counselor, or master's level clinician with three (3) years experience in the substance abuse field. Substance abuse treatment services must be fully described in the detailed program description and must have a written curriculum containing a description of each session offered. Juvenile offenders receiving substance abuse treatment services shall have an orientation to a twelve-step program at the appropriate point in ~~his~~ treatment, or an introduction to a community intervention program if a twelve-step program is not appropriate for him. Relapse prevention plans must be a component of the substance abuse treatment services provided in programs offering more than substance abuse education. Relapse prevention plans must be specifically based on the individual needs of the juvenile offender. Notes documenting the service provided must be dated, clearly labeled "substance abuse treatment services," and each entry must be signed by the counselor performing the service. (~~4-2-08~~)()

03. Suicide Prevention and Risk Management. In addition to the policy required in Paragraph 261.01.e., of this rule, contract providers must be able to demonstrate that they: (4-6-05)

a. Train staff regularly to identify, document and appropriately respond to behavior that may indicate a risk of suicide; (4-6-05)

b. Utilize medical or other staff trained by a mental health professional to review history, and interview and observe juvenile offenders new to the program in order to complete suicide risk screening within two (2) hours of admission; (4-2-08)

c. Utilize a mental health professional to complete a suicide risk assessment on a juvenile offender who has been identified by staff as presenting a risk of suicide; (4-2-08)

d. Utilize mental health professionals to help develop a safety plan for each juvenile offender identified as presenting a risk for suicide, and to determine when that risk is reduced enough to reduce or terminate suicide precautions; and (4-2-08)

e. Prohibit the use of separation and isolation of juvenile offenders identified as presenting a suicide risk, unless constant one-on-one (1 on 1) staff supervision is provided and that all juvenile offenders in separation or isolation are closely monitored to reduce the risk of suicidal behaviors. (4-2-08)

04. Social Skills Training Including Relapse Prevention Skills. Programs must assess each juvenile offender's social skills and document specific services provided to improve functioning in this area. Additionally, every juvenile offender must have developed a written relapse prevention plan prior to successfully completing the program. (4-2-08)

05. Health Services. Programs must be able to demonstrate compliance with the required policy concerning access to routine and emergency health and mental health care and, in addition, should provide a basic health curriculum for all juvenile offenders. Contract providers must provide and document a health and suicide risk screening of each juvenile offender within two (2) hours of admission into the program. (4-2-08)

06. Vocational and Prevocational Services. Programs must be able to demonstrate that each juvenile offender's vocational interests and needs have been assessed and an appropriate level of services has been provided. These services may range from a specific vocational skills curriculum, offered on site or in the community, to a prevocational skills component, which at a minimum, involves juvenile offenders in assessing their vocational interests and strengths. (4-2-08)

07. Basic Life Skills and Independent Living. Programs must be able to demonstrate that juvenile offenders are taught basic life skills and that age-appropriate juvenile offenders are involved in independent living skills consistent with their age and needs. This program should include, at a minimum, instruction in: (4-2-08)

- a. Hygiene and grooming skills; (4-6-05)
- b. Laundry and maintenance of clothing; (4-6-05)
- c. Appropriate social skills; (4-6-05)
- d. Housekeeping; (4-6-05)
- e. Use of recreation and leisure time; (4-6-05)
- f. Use of community resources; (4-6-05)
- g. Money management; (4-6-05)
- h. Use of public transportation, where available; (4-6-05)
- i. Budgeting and shopping; (4-6-05)
- j. Cooking; (4-6-05)

k. Punctuality, attendance and other employment-related matters; and (4-6-05)

l. Vocational planning and job finding skills. (4-6-05)

08. Recreational Services. Programs should have a written plan for providing recreational services based on individual needs, interests, and functional levels of the population served. (4-6-05)

a. The recreational program should include indoor and outdoor activities. Activities should minimize television and make use of a full array of table games and other activities that encourage both solitary entertainment and small group interaction. An appropriately furnished area should be designated inside the facility for leisure activities. (4-6-05)

b. Programs should have staff educated and experienced in recreational programs to ensure good planning, organizing, supervision, use of facility, and community activities. Recreational activities considered part of the service implementation plan must be funded by the contract provider. The use of community recreational resources should be maximized, as long as community safety is assured. The contract provider must arrange for the transportation and provide the supervision required for any usage of community recreational resources. No juvenile offender shall be required to pay to participate in recreational activities made available through the program. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

280. RELIGIOUS SERVICES.

Programs must ensure that attendance at religious services is voluntary. No juvenile offender shall be required to attend religious services, and no juvenile offender shall be penalized for not attending nor given privileges for certain attendance. (4-2-08)

01. Voluntary Practice. All juvenile offenders must be provided the opportunity to voluntarily practice their respective religions in a manner and to the extent that will not compromise the safety, security, emotional, or physical well-being of the juvenile offenders in the facility. (4-2-08)

02. Attendance. Juvenile offenders may be permitted to attend religious services of their choice in the community as long as community safety is ensured. (4-2-08)

03. Transportation. Programs must, when reasonably possible, arrange transportation for those juvenile offenders who desire to take part in religious activities of their choice in the community. (4-2-08)

04. Risk to Community. If the juvenile offender cannot attend religious services in the community because staff has ~~reason to believe he would attempt to~~ determined that the juvenile is an escape risk, or otherwise presents a risk to the safety of the community, the contract

provider must make ~~every~~ reasonable efforts to ensure that ~~he~~ the juvenile offender has the opportunity to participate in religious services of ~~his~~ the juvenile's choice at the facility.

(4-2-08)(____)

05. Visits. Juvenile offenders shall be permitted to receive visits from representatives of their respective faiths. (4-2-08)

06. Minor Juvenile Offenders. When the juvenile offender is a minor, the contract provider shall make reasonable effort to comply with the wishes of the legally responsible person with regard to religious observances. A program's staff schedule shall not encourage or discourage participation in general or specific religious services or activities. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

324. COMMUNICABLE DISEASES.

01. Policies. (4-6-05)

a. The contract provider shall establish policies and procedures for serving juvenile offenders with infectious diseases such as tuberculosis, hepatitis, and HIV or AIDS. These policies and procedures should address the management of communicable diseases, provide an orientation for new staff and juvenile offenders concerning the diseases, and ongoing education for staff and juvenile offenders regarding these diseases. Policies and procedures should be updated as new information becomes available. Individual health information or counseling will be made available by a qualified health professional for juvenile offenders diagnosed with a communicable disease. (4-2-08)

b. The contract provider shall comply with the child care licensing rules of the Idaho Department of Health and Welfare regarding universal precautions. (4-6-05)

02. HIV Testing. In accordance with law, a juvenile offender over age fourteen (14) may request ~~that he~~ to be tested for the presence of HIV. Any such juvenile offender requesting to be tested should be taken to a public health facility or, if available, a facility which accepts Medicaid reimbursement for administration of the test. (4-2-08)(____)

03. Examinations. Examinations shall be performed on any juvenile offender by medical professionals for all symptomatic cases of communicable diseases such as tuberculosis, ova and parasites, infectious hepatitis, and sexually transmitted diseases. Juvenile offenders will be tested and, if indicated, treated. (4-2-08)

04. Confidentiality. Confidentiality shall be maintained. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

326. REFUSAL OF TREATMENT.

This is an incident requiring immediate notification under Subsection 262.02 of these rules.

()

01. Refusal of Recommended Treatment by Physician. If a juvenile offender chooses to refuse treatment or medication recommended by a physician, the juvenile offender must sign a detailed statement refusing this care. A contract provider staff member must witness the juvenile offender's signature. This refusal form will be filed in the juvenile offender's medical record. (4-2-08)

02. Where Refusal Poses Significant Risk. If a juvenile offender refuses a treatment or medication for a condition which poses a significant risk of death or permanent physical impairment, the contract provider shall issue its approval for the immediate administration of the medical treatment or medication in accordance with standard practice. If danger to the juvenile offender is not imminent, the contract provider shall contact the clinical services administrator and notify the department's regional R.N. of the juvenile offender's refusal. (4-2-08)

IDAPA 11 - IDAHO STATE POLICE

11.07.01 - RULES GOVERNING MOTOR VEHICLES - GENERAL RULES

DOCKET NO. 11-0701-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-2901 and 49-901, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule making updates the standards and specifications applicable to Idaho equipment Code in Title 49, Chapter 9, to current standards and specifications in federal guidelines.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 26 through 28.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

No negative fiscal impact will result from this change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lt. Bill Reese, (208) 884-7220 or william.reese@isp.idaho.gov.

DATED this 15th day of October, 2009.

Colonel G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83643
(208) 884-7003 / (208) 884-7090

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-2901 and 49-901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking updates the standards and specifications applicable to Title 49 - Motor Vehicles, Chapter 9 - Vehicle Equipment, Idaho Code, which are incorporated by reference into this rule, to current standards and specifications in federal guidelines.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

No fee or charge is imposed or increased.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

No negative fiscal impact on the general fund will result from this change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking only updates references.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lt. Bill Reese, (208) 884-7220 or william.reese@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2009.

DATED this 14th day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

006. DEFINITIONS (RULE 6).

- 01. Department.** The “Department,” as used herein, means the Idaho State Police. (7-1-93)
- 02. Director.** The “Director,” as used herein, means the Director of the Idaho State Police. (7-1-93)
- 03. Motor Vehicle.** Will be the same as the definition found in Idaho Code 49-123(2)(g). (4-2-08)(____)
- 04. Highway.** Will be the same as the definition found in Section 49-109(h), Idaho Code. (4-2-08)(____)

(BREAK IN CONTINUITY OF SECTIONS)

020. SOCIETY OF AUTOMOTIVE ENGINEERS (SAE) (RULE 20).

The Director incorporates by reference the SAE Ground Vehicle Lighting Standards Manual, 2006~~9~~ edition, and SAE standards J586, J588, and J639. All owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable provisions of the SAE Ground Vehicle Lighting Standards Manual, 2006 edition, and SAE standards J586, J588, and J639. (4-2-08)(____)

01. Standards and Specifications for Lighting Devices. Pursuant to Section 49-901(1), Idaho Code, the Director hereby incorporates by reference the standards and specifications set forth by the Society of American Engineers in the SAE Ground Vehicle Lighting Standards Manual, 2006~~9~~ edition, as if set forth herein in full. (4-2-08)(____)

02. Standards for Rear Mounted Acceleration and Deceleration Lighting Systems (Use Optional). The current standards found in “Supplemental High Mounted Stop and Rear Turn Signal Lamps for Use on Vehicles Less Than 2032 MM Overall Width -- SAE J586 and J588,” is found in Section 49-921, Idaho Code, as if set forth herein in full. (4-2-08)

03. Safety Practices and Standards for Automotive Air Conditioning Devices, Standards and Specifications. Pursuant to Section 49-901(7), Idaho Code, the Director hereby incorporates by reference the current standards set forth in “Safety Practices For Mechanical Vapor Compression Refrigeration Equipment of Systems Used to Cool Passenger Compartment of Motor Vehicles -- SAE J639,” as if set forth herein in full. (4-2-08)

021. -- 029. (RESERVED).

030. IDAHO STATE DEPARTMENT OF EDUCATION, STANDARDS FOR IDAHO SCHOOL BUSES AND OPERATIONS MANUAL (RULE 30).

The Director incorporates by reference the standards found in the November ~~7~~, 2006~~8~~ “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Board of

Education. All owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable standards found in the “Standards for Idaho School Buses and Operations” manual. (4-2-08)()

01. General Rules. Pursuant to Section 49-901(8), Idaho Code, the Director hereby incorporates by reference the standards found in the November ~~17~~, 2006~~8~~ “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education as if set forth herein in full. (4-2-08)()

02. Lighting Equipment. Pursuant to Section 49-901(2), Idaho Code, the Director hereby incorporates by reference the standards found in the November ~~17~~, 2006~~8~~ “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education as if set forth herein in full. (4-2-08)()

031. -- 039. (RESERVED).

040. FEDERAL REGULATIONS - 49 C.F.R. PARTS 392, 393, AND 571 (RULE 40).

The Director incorporates by reference Title 49 of the Code of Federal Regulations, October 1, 2007~~8~~ edition, Parts 392, 393, and 571. All owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable Parts found in Title 49 of the Code of Federal Regulations. (4-2-08)()

01. Certain Vehicles Required to Stop at All Railroad Crossings. Pursuant to Section 49-648, Idaho Code, the Director hereby incorporates by reference the requirements found in Title 49 (49 C.F.R.) of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) Part 392, Subpart B, Section 392.10, as if set forth herein in full. (4-2-08)

02. Devices With Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to Requirements for fusees and liquid burning flares found in 49 C.F.R., Part 393, Subpart H, Section 393.95. Warning devices with self-contained energy sources permissible, under this chapter are limited to liquid burning emergency flares, and fusees. (4-2-08)

03. Modulating Headlights for Motorcycles. Pursuant to Section 49-925, 49-901(3), 49-901(4), Idaho Code, the Director hereby approves modulating headlights for use on motorcycles. Such headlights shall conform to the standards and specifications with regard to modulating headlights found in 49 C.F.R. Section 571.108, Standard 108, S7.9.4, which is hereby adopted by reference as if set forth herein in full. (4-2-08)

04. Standards for Safety Helmets. Pursuant to Section 49-666, Idaho Code, the Director hereby incorporates by reference the standards found in 49 C.F.R. Section 571.218, Standard No. 218, as if set forth herein in full. (4-2-08)

05. Standards for Devices Without Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to ~~flares and~~ reflex reflective and fluorescent material warning devices found in 49 C.F.R. Section 571.125, Standard 125, as if set forth herein in full. (4-2-08)()

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL (POST)

DOCKET NO. 11-1101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 252 through 255.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Trish Christy at (208) 884-7253.

DATED this 10th day of November, 2009.

Steve Raschke
Interim Executive Director
Idaho State Police
Peace Officer Standards and Training Council
700 S. Stratford Dr.
Meridian, ID 83642-6202
(208) 884-7046
(208) 884-7295

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **June 11, 2009**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule establishes that the certification of a former officer who is under decertification investigation will not lapse while he is under decertification investigation. This allows POST Council to retain jurisdiction over the former officer while the decertification proceedings are being completed. Additionally, applicants will be required to disclose any prior decertification proceedings against them and the results thereof.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

If an officer's certification lapses, the POST Council no longer has authority over them, and cannot decertify them even though the decertification investigation confirms conduct that warrants decertification. This rulemaking is necessary to protect the public health, safety and welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 4th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

092. LAPSE OF PEACE OFFICER CERTIFICATION.

The certification of any peace officer will be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein shall be tolled during any time period that a peace officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-2-08)()

01. Three to Five Years. A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements: (4-6-05)()

- a.** Submit a POST Certification Patrol Challenge Packet; (4-2-03)
- b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()
- b.c.** Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- ed.** Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i.** The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)

- ii. The POST Firearms Qualification Course; (4-2-03)
- iii. The POST Physical Fitness Test Battery; and (4-2-03)
- ~~de.~~ Satisfy the probationary period requirement of Section 064. (4-2-08)

02. Over Five Years. A peace officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Patrol Academy to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: ~~(4-6-05)~~()

a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

~~ab.~~ Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)

~~bc.~~ Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

~~ed.~~ Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)

ii. The POST Firearms Qualification Course; (4-2-03)

iii. The POST Physical Fitness Test Battery; and (4-2-03)

~~de.~~ Satisfy the probationary period requirement of Section 064. (4-2-08)

03. Over Eight Years. A peace officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

04. Exception. The provisions of Subsections 092.01 through 092.03 will not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

171. LAPSE OF DETENTION OFFICER CERTIFICATION.

The certification of any county detention officer will be considered lapsed if the officer does not serve as a county detention officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified county detention officer who remains in an administrative, patrol, communications, or civil division duty assignment with a police or law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision will retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein shall be tolled during any time period that a county detention officer is the subject of a POST decertification investigation and is no longer employed in law enforcement.

(4-2-08)()

01. Three to Five Years. A county detention officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements:

(4-6-05)()

a. Submit a POST Certification Detention Challenge Packet; (4-2-03)

b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

~~bc.~~ Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

~~ed.~~ Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; (4-2-03)

iii. The POST Physical Fitness Test Battery; and (4-2-03)

~~de.~~ Satisfy the probationary period requirement of Section 064. (4-2-08)

02. Over Five Years. A county detention officer who has been out of full-time law enforcement status for over five (5) years must attend the POST Basic Detention Academy to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence must be submitted with a POST Certification Detention Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements:

(4-6-05)()

a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

~~b.~~ Attend an approved course of study in Idaho detention legal issues and pass the POST Idaho detention legal issues exam; (4-2-03)

~~b.c.~~ Attend and pass Idaho POST-certified courses in Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)

~~ed.~~ Pass the following tests administered by a POST Training Specialist: (4-2-03)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; (4-6-05)

iii. The POST Physical Fitness Test Battery; and (4-6-05)

~~de.~~ Satisfy the probationary period requirement of Section 064. (4-2-08)

03. Over Eight Years. A county detention officer who has been out of full-time law enforcement status for over eight (8) years must attend the POST Basic Detention Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-6-05)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL (POST)

DOCKET NO. 11-1101-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In response to suggestions from the Legislative Services Office, the following changes were made:

Language was added to Subsection 091.02. to specify the appointments that would make POST certification valid.

Language was amended in Subsections 098, 136, 150., 176, and 177 to clarify that officers may be eligible to challenge under certain circumstances rather than shall be eligible to challenge.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 256 through 263.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Trish Christy at (208) 884-7253.

DATED this 10th day of November, 2009.

Steve Raschke
Interim Executive Director
Idaho State Police/Peace Officer Standards and Training
700 S. Stratford Dr., Meridian, ID 83642-6202
(208) 884-7046/(208) 884-7295

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Updates contact information, as it has changed; establishes the requirements for Conducted Energy Device certification; updates the property language to encompass all disciplines POST Council certifies; adds requirement that an officer charged with a felony or non-traffic misdemeanor notify the POST Executive Director; establishes that a decertified officer is not eligible for POST certification of any kind in the future, and that an officer under decertification investigation is not eligible for certification while under investigation; and requires applicants to disclose any decertification proceedings against them and the results thereof.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN

COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 4th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- WEBSITE.

The principal place of business of the Idaho State Police, Peace Officer Standards and Training, is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training Academy, ~~P.O. Box~~ 700 S. Stratford Dr., Meridian, Idaho 83680-070042-6202. The telephone number of ~~the office~~ administration is (208) 884-7250 and the telephone number of basic academy training is (208) 884-7337. The facsimile number of ~~the office~~ administration is (208) 884-7295 and the facsimile number of basic academy training is (208) 884-7398. The Peace Officer Standards and Training website is <http://www.idaho-post.org>.
(4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

091. INTRODUCTION.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. (3-20-97)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the officer has not been decertified and is appointed as an Idaho peace, county detention, juvenile detention, ~~or~~ juvenile probation, correction, adult probation and parole, or misdemeanor probation officer, or an Idaho Department of Juvenile Corrections Direct Care Staff member. (4-2-03)()

03. Decertification. (3-30-07)

a. The Council shall decertify any officer who is convicted, as defined in Idaho Code

Section 19-5109, of any felony or offense which would be a felony if committed in this state. The Council may decertify any officer who is convicted, as defined in Section 19-5109, Idaho Code, of any misdemeanor; willfully or otherwise falsifies or omits any information to obtain any certified status; or violates any of the standards of conduct as established by the council's code of conduct or code of ethics, as adopted and amended by the council. Any officer charged with a felony, a non-traffic misdemeanor, or a misdemeanor that would be a felony if committed in this state, must notify the POST Executive Director within fourteen (14) business days. Failure to notify constitutes a violation of the Law Enforcement Code of Ethics and the Law Enforcement Code of Conduct. (3-30-07)()

b. Any officer decertified by the Council is not eligible for POST certification of any kind in the future ~~except as a correction officer with approval by the POST Council.~~ Any officer who is the subject of a POST decertification investigation is not eligible for POST certification of any kind while under investigation. (3-30-07)()

04. Law Enforcement Code of Conduct. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality, and justice. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. In furtherance of these duties, I hereby adopt and accept the following code of conduct: (7-1-99)

a. I shall conduct myself at all times in a manner that does not damage or have the likely result of damaging or bringing the public image, integrity, or reputation of my department or myself into discredit or disrepute. (7-1-99)

b. I shall not possess or consume alcoholic beverages on duty or while in uniform on duty or off duty, except as expressly required for the lawful performance of my duties. Nor shall I unlawfully possess, sell, consume, use or assist in the use of any illegal or unauthorized drugs or medications on duty or off duty. (7-1-99)

c. I shall not engage in any illegal or unlawful harassment or intimidation of another, nor shall I permit personal prejudices, political beliefs, animosities, or friendships to influence my decisions. (7-1-99)

d. I shall not lie, give misleading information, or falsify written or verbal communications in official reports or in my actions with another person or organization when it is reasonable to expect that such information may be relied upon because of my position or affiliation with my department. (3-30-07)

e. I shall willfully observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices of my department. I shall also subordinate my personal preferences and work priorities to the lawful verbal and written rules, duties, policies, procedures and practices of my department, as well as to the lawful orders and directives of supervisors and superior command personnel of my department. I shall willfully perform all lawful duties and tasks assigned by supervisory and/or superior-ranked personnel. Direct, tacit, or constructive refusal to do so is insubordination. (7-1-99)

f. I shall obey the constitutional, criminal and civil laws of the city, county, state, and federal government. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. (7-1-99)

05. Law Enforcement Code of Ethics. (3-30-07)

a. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. (3-30-07)

b. I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty. (3-30-07)

c. I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. (3-30-07)

d. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. (3-30-07)

e. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

098. CHALLENGING THE BASIC PATROL ACADEMY.

Any peace officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years ~~will~~ may be eligible for certification in the state of Idaho without attending the Basic Patrol Academy, provided the officer: (4-6-05)(_____)

01. Submission of Challenge Packet. Submits a POST Certification Patrol Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

02. Discloses Decertification Information. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

023. Law Course Attendance. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-03)

034. Passes Required Tests. Passes the following tests administered by a POST Training Specialist: (4-2-03)

a. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-03)

b. The POST Firearms Qualification Course; and (4-2-03)

c. The POST Physical Fitness Test Battery. (4-2-03)

045. Completes Probationary Period. Completes his probationary period as required by Subsection 097.01. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

136. CHALLENGING THE LEVEL I RESERVE CORE CURRICULUM.

01. Certified in Idaho. A reserve peace officer who has within the last three (3) years served as a full-time certified Idaho peace officer shall be eligible for Level I Reserve certification without attending the Level I Reserve core curriculum, submitting a completed Level I Reserve Certification Packet, or passing the Level I Reserve certification examination provided he submits a completed Application for Certification form. (4-2-03)

02. Certified in Another State, Commissioned by the Federal Government, or a Graduate of a Basic Police Academy. A reserve peace officer who has within the last three (3) years served as a full-time certified peace officer in another state or as a full-time commissioned peace officer of the federal government or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years *shall may* be eligible for Level I Reserve certification in the state of Idaho without attending the Level I Reserve core curriculum, provided he: (4-2-03)()

a. Submits a completed POST Level I Reserve Certification Packet to POST Council,

which shall include copies of POST certifications and training records from other states, transcripts, certificates, diplomas, or other documents that substantiate the officer's training and experience; (4-2-03)

b. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

bc. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; and (4-2-03)

ed. Passes the POST Level I Reserve certification examination conducted in the manner set forth in Section 135. (4-2-03)

03. Out Over Three Years. A reserve peace officer who has been out of full-time law enforcement for over three (3) years shall complete all requirements as set forth in Sections 130 through 135 to be awarded a Level I Reserve certification. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

150. CHALLENGING THE LEVEL I RESERVE MARINE DEPUTY CORE CURRICULUM.

01. Certified in Idaho. A reserve marine deputy who has within the last three (3) years served as a full-time certified Idaho peace officer shall be eligible for Level I Reserve Marine Deputy certification without attending the Level I Reserve Marine Deputy core curriculum or submitting a completed Level I Reserve Marine Deputy Certification Packet provided he passes the Level I Reserve Marine Deputy certification examination and submits a completed Application for Certification form. (4-2-03)

02. Certified in Another State, Commissioned by the Federal Government, or a Graduate of a Basic Police Academy. A reserve marine deputy who has within the last three (3) years served as a full-time certified peace officer in another state or as a full-time commissioned peace officer of the federal government or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years ~~shall~~ may be eligible for Level I Reserve Marine Deputy certification in the state of Idaho without attending the Level I Reserve Marine Deputy core curriculum, provided he: (4-2-03)()

a. Submits a completed POST Level I Reserve Marine Deputy Certification Packet to POST Council, that shall include copies of POST certifications and training records from other states, transcripts, certificates, diplomas, or other documents that substantiate the officer's training and experience; (4-2-03)

b. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

bc. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; and (4-2-03)

ed. Passes the POST Level I Reserve Marine Deputy certification examination conducted in the manner set forth in Section 149. (4-2-03)

03. Out Over Three Years. A reserve marine deputy who has been out of full-time law enforcement for over three (3) years shall complete all requirements as set forth in Sections 130 and 131 and 146 through 149 to be awarded a Level I Reserve Marine Deputy certification. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

176. THE LEVEL I CERTIFICATE.

In addition to the requirements set forth in Section 173 of these rules, the requirements in Section 176 are necessary for award of the Level I Certificate. (4-2-03)

01. Probation. The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include basic detention academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time shall be continuous with the agency the officer is appointed to when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. (4-2-03)

02. Basic Training. The applicant shall have satisfactorily completed: (4-2-03)

a. The POST Basic Detention Academy as required by the Council in Section 071; (4-2-03)

b. The POST Patrol-to-Detention Transition Academy; or (4-2-03)

c. Be a graduate of a law enforcement vo-tech program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Detention Academy, and shall have passed the POST detention certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Detention Academy to be certified. (4-2-03)

03. Jail Training. The applicant shall have satisfactorily completed forty (40) hours of POST-approved jail training. (4-2-03)

04. Vo-Tech Program Graduates. Graduates from Idaho POST-certified law enforcement vo-tech programs shall also comply with the requirements of Subsection 073.02. (4-2-03)

05. Patrol and Detention Vo-Tech Program Graduates. An applicant who is appointed to a detention officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified law enforcement vo-tech program, *shall may* be eligible for detention officer certification in Idaho without attending the POST Basic Detention Academy, provided the officer: ~~(4-2-08)~~(____)

a. Was appointed to a peace officer position in Idaho within three (3) years from graduating from the vo-tech program; (4-2-08)

b. Possesses peace officer certification from Idaho; (4-2-08)

c. Submits a POST Certification Detention Challenge Packet; (4-2-08)

d. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (____)

~~**e.**~~ Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-2-08)

ef. Passes the following tests administered by a POST Training Specialist: (4-2-08)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; (4-2-08)

iii. The POST Physical Fitness Test Battery; and (4-2-08)

fg. Satisfies the probationary period requirement of Section 064. (4-2-08)

177. CHALLENGING THE BASIC DETENTION ACADEMY.

Any county detention officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a detention officer or a student who has satisfactorily completed a Basic Detention Academy equivalent to the Idaho POST Basic Detention Academy within the last three (3) years *will may* be eligible for certification in the state of Idaho without attending the Basic Detention Academy, provided the officer: ~~(4-6-05)~~(____)

01. Submission of Challenge Packet. Submits a POST Certification Detention Challenge Packet to POST Council, which must include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience; (4-6-05)

02. Discloses Decertification Information. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (____)

023. Detention Legal Issues Course Attendance. Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-6-05)

034. Passes Required Tests. Passes the following tests administered by a POST Training Specialist: (4-2-03)

a. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

b. The POST Firearms Qualification Course; and (4-2-03)

c. The POST Physical Fitness Test Battery. (4-2-03)

045. Completes Probationary Period. Completes his probationary period as required by Subsection 176.01. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

197. GENERAL PROVISIONS.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. Communications Specialist Certification is not statutorily mandated, but is voluntary. (4-2-03)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the communications specialist is appointed as an Idaho communications specialist by a duly constituted Idaho law enforcement agency and has not been decertified. ~~(4-2-03)~~(____)

03. Eligibility. To be eligible for the award of a Level I, Level II, Level III, or Advanced certificate, each applicant shall be a full-time communications specialist appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

04. Applications. All applications for award of the Level I, Level II, Level III, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

05. Submission. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

06. Training. Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. (4-2-03)

07. Minimum Standards. Each applicant shall meet the minimum standards for employment as provided in Sections 050 through 058. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

256. RENEWAL.

01. Notification. At the end of the certification period, the POST Council shall send notification to the instructor, provided the instructor still meets the qualifications for instructor certification. (4-2-03)

02. Requirements. To renew the certification, the instructor shall submit the following to POST Council: (4-2-03)

a. A teaching log indicating the instruction of at least one (1) class during the last certification period; (4-2-03)

b. An updated lesson plan, if any changes have been made since it was last submitted; and (4-2-03)

c. A POST Short Course firearms qualification score sheet witnessed by a POST-certified firearms instructor other than the renewing instructor. This requirement applies only to POST-certified firearms instructors who are renewing their firearms instructor certification. (4-2-03)

d. Instructors must meet recertification requirements in compliance with Council and applicable industry standards. ()

(BREAK IN CONTINUITY OF SECTIONS)

266. MASTER INSTRUCTOR CERTIFICATION.

Master Instructor Certificates are established for the purpose of recognizing competence as an instructor of instructors of law enforcement subjects and/or general subjects pertinent to law enforcement personnel, especially high liability subjects such as Arrest Techniques, Conducted Energy Devices, DUI, Emergency Vehicle Operation, Firearms, Impact Weapons, Instructor Development, and Weapons Retention. (5-8-09)()

267. REQUIREMENTS.

In addition to the requirements set forth in Sections 250 and 251 of these rules, the requirements in Sections 266 through 269 are necessary for award of the master instructor certificate: (4-2-03)

01. Instructor Development Course. The applicant shall have satisfactorily completed an Instructor Development Course approved by the Council. (4-2-03)

02. POST-Certified Instructor. The applicant shall be a current POST-certified instructor in the subject he is applying for Master Instructor certification in, and shall have held that certification for a minimum of three (3) years prior to application. The Council may waive this requirement in exceptional cases reflecting outstanding education, experience, or achievement; or under unusual circumstances upon written application by the POST Executive Director. (4-2-03)

03. Instruction. The applicant shall have instructed a minimum of forty (40) hours of classes in the subject he is applying for Master Instructor certification in during each of the previous two (2) years. (4-2-03)

04. Additional Training or Education. The applicant shall have received additional training or education beyond basic training in the area of their instructor certification. In addition to this requirement, an applicant who is applying to become a Master Instructor in Conducted Energy Devices shall attend and successfully complete a “Master Instructor”-level Conducted Energy Device course offered by a reputable manufacturer as approved by the POST Council. (4-2-03)()

05. Exceptional Ability. The applicant shall have demonstrated exceptional ability to develop and present training. (4-2-03)

06. Recommendation. The applicant shall be recommended for master instructor certification by a POST Regional Training Specialist or a current POST-certified master instructor. (4-2-03)

07. Maintain Certification. The applicant shall be willing to commit to teaching a minimum of one (1) instructor class during the certification period to maintain certification. (4-2-03)

IDAPA 11 - IDAHO STATE POLICE

11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In response to suggestions from the Legislative Services Office, the following changes were made:

Language in Subsection 022.02 was amended to specify the appointments that would make POST certification valid.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 264 through 268.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact on the general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Trish Christy at (208) 884-7253.

DATED this 10th day of November, 2009.

Steve Raschke
Interim Executive Director
Idaho State Police/Peace Officer Standards and Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
(208) 884-7046/(208) 884-7295

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Updates contact information, as it has changed; allows the POST Executive Director to review “General Under Honorable Conditions” and “Uncharacterized” military discharges for possible waiver; and requires applicants to disclose any decertification proceedings against them and the results thereof.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding this proposed rulemaking. All written

comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 4th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- WEBSITE.

01. Idaho State Police, Peace Officer Standards and Training. The principal place of business of the Idaho State Police, Peace Officer Standards and Training, is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training Academy, ~~P.O. Box 700 S. Stratford Dr.~~, Meridian, Idaho 83680-0700 42-6202. The telephone number of ~~the office administration~~ is (208) 884-7250 and the telephone number of basic academy training is (208) 884-7337. The facsimile number of ~~the office administration~~ is (208) 884-7295 and the facsimile number of basic academy training is (208) 884-7398. The Peace Officer Standards and Training website is <http://www.idaho-post.org>. (4-11-06)()

02. Idaho Department of Correction. The principal place of business of the Idaho Department of Correction is in Boise, Idaho. The office is located at 1299 North Orchard, Suite 110, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Correction, P.O. Box 83720, Boise, Idaho 83720-0018. The telephone of the office is (208) 658-2000. The facsimile number of the office is (208) 327-7496. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

022. GENERAL PROVISIONS.

01. POST Basic Correction Academy Costs for Personnel of Private Prison Contractors. Pursuant to Section 20-241A(3)(c), Idaho Code, the Idaho Department of Correction may provide training to personnel of private prison contractors and charge a fee not to exceed the cost of training. Since the Basic Correction Academy is conducted by the Peace Officer Standards & Training Council, any fees collected by the Idaho Department of Correction for attendance at the POST Basic Correction Academy by personnel of private prison contractors must be submitted to the POST Council. (4-11-06)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the officer *has not been decertified and* is appointed as an Idaho correction or

adult probation and parole officer.

~~(4-11-06)~~(____)

03. Eligibility. To be eligible for the award of a Basic Correction Officer certificate, each applicant must be a full-time correction officer or a professional member of the POST Council staff. To be eligible for the award of a Basic Adult Probation and Parole Officer certificate, each applicant must be a full-time adult probation and parole officer or a professional member of the POST Council staff. (4-11-06)

04. Applications. All applications for award of certification must be completed by the applicant on the prescribed form “Application for Certification” as provided by the POST Council. (4-11-06)

05. Submission. The Application for Certification form must be submitted by the applicant to his agency head who must review it for accuracy prior to signing it and forwarding it to the Council. Certificates will be issued to the agency head for award to the applicant. (4-11-06)

06. Decertification. The Council may decertify any correction or adult probation and parole officer in the same manner as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council,” Subsection 091.03. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

037. MILITARY RECORD.

A “dismissal,” “bad conduct discharge” (BCD), “dishonorable discharge” (DD), or administrative discharge of other than honorable (OTH) from the military service will disqualify the applicant. The administrative discharge of “general under honorable conditions” (GEN), a “general” discharge, or an “uncharacterized” discharge may be grounds for rejection. In the case of a “general under honorable conditions” or “uncharacterized” discharge, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director will have the discretion to refer the application to the POST Council. In the case of a “general” discharge, the POST Council will review the application and determine whether the individual will be certifiable as a correction officer in the state of Idaho. ~~(4-11-06)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

051. LAPSE OF CORRECTION OFFICER CERTIFICATION.

The certification of any correction officer will be considered lapsed if the officer does not serve as a correction officer in Idaho for three (3) consecutive years. The three-year period provided herein shall be tolled during any time period that a correction officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(4-11-06)~~(____)

01. Three to Five Years. A correction officer who has been out of full-time correction

officer status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements: ~~(4-11-06)~~()

- a.** Submit a POST Certification Correction Challenge Packet; (4-11-06)
- b.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()
- ~~**b.c.**~~ Pass the following tests administered by a POST Training Specialist: (4-11-06)
 - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; and (4-11-06)
 - ii. The POST Correction Officer Physical Agility Test; and (4-11-06)
- ~~**ed.**~~ Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

02. Over Five Years. A correction officer who has been out of full-time correction officer status for over five (5) years must attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time correction officer status, the officer was engaged in an occupation requiring correction officer training, skill, and experience. This evidence must be submitted with a POST Certification Correction Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: ~~(4-11-06)~~()

- a.** Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()
- ~~**ab.**~~ Pass the following tests administered by a POST Training Specialist: (4-11-06)
 - i. The POST correction certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; and (4-11-06)
 - ii. The POST Correction Officer Physical Agility Test; and (4-11-06)
- ~~**bc.**~~ Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

03. Over Eight Years. A correction officer who has been out of full-time correction officer status for over eight (8) years must attend the POST Basic Correction Academy or a POST-certified private prison contractor's correction officer training program to be recertified. No waiver of this requirement will be granted by the Council. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

062. LAPSE OF ADULT PROBATION AND PAROLE OFFICER CERTIFICATION.

The certification of any adult probation and parole officer will be considered lapsed if the officer does not serve as an adult probation and parole officer in Idaho for three (3) consecutive years. The three-year period provided herein shall be tolled during any time period that an adult probation and parole officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. (4-11-06)()

01. Three to Five Years. An adult probation and parole officer who has been out of full-time adult probation and parole officer status from three (3) to five (5) years and who wants to ~~be recertified~~ reactivate certification must meet the following POST requirements: (4-11-06)()

a. Submit a POST Certification Adult Probation and Parole Challenge Packet; (4-11-06)

b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

bc. Pass the following tests administered by a POST Training Specialist: (4-11-06)

i. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)

ii. The POST Firearms Qualification Course; (4-2-08)

iii. The POST Adult Probation and Parole Officer Physical Agility Test; and(4-11-06)

ed. Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)

02. Over Five Years. An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over five (5) years must attend the POST Basic Adult Probation and Parole Academy to ~~be recertified~~ reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time adult probation and parole officer status, the officer was engaged in an occupation requiring adult probation and parole officer training, skill, and experience. This evidence must be submitted with a POST Certification Adult Probation and Parole Challenge Packet. Upon receiving a waiver, the officer must meet the following POST requirements: (4-11-06)()

a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. ()

ab. Attend and pass Idaho POST-certified courses in Arrest Techniques and Practical Problems; (4-11-06)

- bc.** Pass the following tests administered by a POST Training Specialist: (4-11-06)
- i. The POST adult probation and parole certification examination approved by the Council, conducted in the manner set forth in Subsection 053.02.b. of these rules; (4-2-08)
 - ii. The POST Firearms Qualification Course; (4-2-08)
 - iii. The POST Adult Probation and Parole Officer Physical Agility Test; and (4-11-06)
- ed.** Satisfactorily complete a probationary period of not less than six (6) months. (4-11-06)
- 03. Over Eight Years.** An adult probation and parole officer who has been out of full-time adult probation and parole officer status for over eight (8) years must attend the POST Basic Adult Probation and Parole Academy to be recertified. No waiver of this requirement will be granted by the Council. (4-11-06)

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE

DOCKET NO. 21-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-204, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 300 through 303.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact on the general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

DATED this 1st day of October, 2009.

David E. Brasuell
Administrator
Division of Veterans Services
320 Collins Road
Boise, ID 83702
Phone: (208) 334-351
Fax (208) 334-2627

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **May 29, 2009**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 65-204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The U. S. Department of Veterans Affairs established revised requirements concerning payments to state veterans nursing homes during the hospitalization of a resident (see 74 Fed. Reg. 19426-451). These rules were effective May 29, 2009, and conflict with the Idaho State Veterans Homes' established rules. The rule revisions remove references to specific time periods and payment rates for residents admitted to a hospital and desiring to retain their residence at a state veterans home. As required by the rules of the Idaho Department of Health and Welfare, IDAPA 16.03.02.100.03, the state veterans homes will fully inform residents upon admission of its bed hold policies and charges, and upon any change to the policies.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule revisions are necessary to be in compliance with amendments to governing federal regulations.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated

rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2009.

DATED this 10th day of July 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

915. MAINTENANCE CHARGES.

Upon becoming a resident of a Home, each resident is liable for the payment of a maintenance charge as well as expenses for supplies, medication, equipment, and services (other than basic services for the assigned level of care) that are not provided or paid for by VA, Medicaid, Medicare, or other insurance unless otherwise determined by the Home Administrator. Residents living in a Home for any part of a month must pay for each day, based on the actual number of days in the month, at that fraction of their total charge. Refusal or failure to pay the established maintenance charge or related expenses is cause for discharge from the Home. (3-30-01)

- 01. Charges.** Charges will be computed, based on the following factors: (3-30-01)
 - a.** If the resident has an income, those items used to compute the charge will include: (3-30-01)
 - i. Social Security benefits; (3-30-01)
 - ii. Retirement benefits; (3-30-01)
 - iii. Income from annuities; (3-30-01)
 - iv. Insurance benefits; (3-30-01)
 - v. Rental from property; (3-30-01)
 - vi. Farm income; (3-30-01)
 - vii. VA pensions or compensations; (3-30-01)
 - viii. Tax refunds; and (3-30-01)

- ix. Income from any and all other sources. (3-30-01)
- b.** If the resident is single, incompetent, and has liquid assets in excess of one thousand five hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than one thousand five hundred dollars (\$1,500). (3-15-02)
- c.** If the resident is single, competent, and has liquid assets in excess of fifteen hundred dollars (\$1,500), he will be assessed the current maximum charge until those assets are reduced to less than fifteen hundred dollars (\$1,500). (3-30-01)
- d.** Joint income will be used in computing charges for married persons. If the resident has dependents who rely upon him for financial support, the amount of liquid assets will not be drawn upon after they have declined to a level of five thousand dollars (\$5,000). (3-30-01)
- 02. Exclusions from Income or Payment.** The only exclusions in computing monthly charges will be: (3-30-01)
- a.** Those funds which a resident receives from the sale of hobby/craft items constructed and sold as part of a Home occupational therapy program; or (3-30-01)
- b.** Those unusual expenses specified below, which are incurred after the resident's admission to a Home and are approved by the Home Administrator, up to a maximum monthly allowance which is established pursuant to Section 980 of these rules: (3-30-01)
- i. Prosthetic, orthopedic, and paraplegic appliances; (3-30-01)
- ii. Sensory aids; (3-30-01)
- iii. Wheelchairs; (3-30-01)
- iv. Therapy services; (3-30-01)
- v. Hospital, medical, surgical expenses and bills for prescription drugs incurred and paid by the individual in the current month and documented by a paid receipt. (3-30-01)
- c.** Reasonable medical insurance premiums, as paid, with documentation of payment. Other insurance premiums are excluded from consideration; or (3-30-01)
- d.** An allowance established pursuant to Section 980 of these rules for retention by a resident for personal needs; (3-30-01)
- e.** That amount necessary for a resident of a Home to contribute to the support of a legal dependent where proof of actual payment is documented. A monthly allowance will be established for a spouse or additional dependents pursuant to Section 980 of these rules. (These allowances take into consideration housing and utility costs.) (3-30-01)
- 03. Income Eligibility Limits.** (3-30-01)

a. Nursing Care. None. (3-30-01)

b. Residential and Domiciliary Care. A resident's total monthly net income, from all sources, may not exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12) unless waived by the Home Administrator in accordance with Subsection 100.08 of these rules. (3-30-01)

c. While in residence at a Home, a domiciliary resident may seek outside employment and receive income so that his total monthly net income from all sources will exceed the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12) for a one (1) month transitional period. At the end of this one (1) month transitional period, the resident will be discharged. (3-30-01)

04. Continued Eligibility. (3-30-01)

a. Nursing Care. A resident may continue to be eligible for residency in a Home, regardless of income changes, if the conditions defined in Subsection 100.09 of these rules continue to be met. (3-30-01)

b. Residential and Domiciliary Care. If a resident's net monthly income exceeds the income eligibility limit after admission to the Home, the resident may appeal to the Home Administrator for a waiver of the income eligibility limit which may be granted for good cause. Consideration for good cause must include "need for continuing medical care" as documented by a VA Medical Center physician. (3-30-01)

05. Charges. (3-30-01)

a. Nursing Care. After allowable deductions, a resident will be assessed a fee equal to the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge is based on historical costs that are adjusted to include anticipated costs and an inflation factor. Changes to the maximum charge are made pursuant to Section 980 of these rules. (3-30-01)

b. Residential Care. After allowable deductions, a resident will be assessed a fee of seventy-five percent (75%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be seventy-five percent (75%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12). (3-30-01)

c. Domiciliary Care. After allowable deductions, a resident will be assessed a fee of sixty percent (60%) of the remaining portion of his net monthly income up to the maximum charge. The maximum monthly maintenance charge shall be sixty percent (60%) of the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95-588 divided by twelve (12). (3-30-01)

06. Payment Schedule. Maintenance charges are due the first of each month and must be paid in full by the resident or guardian on or before the tenth day of the month. Payments may be made either by cash or by check, and a receipt will be issued. (3-15-02)

07. Security Deposit. A deposit of one hundred dollars (\$100) will be required by domiciliary and residential care residents upon admission to a Home, unless waived by the Home Administrator. This deposit will be held until the resident leaves. Any debts or liabilities on behalf of the resident will be offset against this deposit at that time. After payment of any debts or liabilities, the remaining balance of the deposit will be returned to the outgoing resident. (5-3-03)

08. Leave of Absence or Hospitalization. Residents receiving Medicaid, ~~or Medicare, or VA per diem~~ will be charged for leave of absence or hospitalization in accordance with Medicaid, ~~and Medicare, and VA~~ requirements. The Home will not reduce charges for leave of absence or hospitalization of residents not ~~receiving qualifying for~~ Medicaid, ~~or Medicare, or VA~~ payment for such absence and each day will count as if the resident were present at a Home. Unless waived by the Home Administrator or prohibited by law, the Home will charge residents receiving Medicaid, Medicare, or VA per diem the current VA per diem rate for each absent day of a leave of absence or hospitalization in excess of ~~twenty-four (24) hours~~ the period eligible for payment by Medicaid, Medicare, or the VA. ~~Unless waived by the Home Administrator, the Home will charge residents not receiving Medicaid the current VA per diem rate for each absent day of a leave of absence or hospitalization in excess of ninety-six (96) hours or a hospital stay in excess of ten (10) days. Residents receiving Medicaid may be granted therapeutic leaves upon a doctor's orders for up to seventy-two (72) hours, not to exceed fifteen (15) days in a calendar year.~~
(3-30-07)()

09. Medicaid Eligibility. All nursing care residents, including re-admitted residents, entering a Home on or after July 1, 2000 must either apply for or become eligible for Medicaid benefits, or must pay the maximum monthly charge as it may be established from time to time. Eligibility for Medicaid benefits is determined entirely by the Idaho Department of Health and Welfare and its agents. Residents who cannot, or choose not to, qualify for Medicaid shall be required to pay for services in full from other than Medicaid funds. Care and services for those residents who are Medicaid eligible will be billed to and paid by Medicaid. Residents eligible for Medicaid will be assessed a fee equal to the resident's liability as determined by Medicaid.
(3-30-07)

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.03 - RULES GOVERNING VETERANS SUPPORT FUND GRANT PROGRAM

DOCKET NO. 21-0103-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 118 through 122.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Veterans Support Fund established by Section 65-209, Idaho Code, began receiving funds through a check box on Idaho tax returns for 2008. The 2009 Idaho Legislature approved the addition of monies to the fund provided by the Gold Star license plate. These rules establish the framework for the expenditure of the funds in such fund through grants to projects and programs supporting veterans. Grants will not exceed the monies received by the Veterans Support Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

DATED this 27th day of August, 2009.

David E. Brasuell, Administrator
Division of Veterans Services
320 Collins Road, Boise, ID 83702
Phone: (208) 334-351 / Fax (208) 334-2627

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **June 1, 2009**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 65-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Veterans Support Fund began receiving funds with the filing of 2008 Idaho tax returns. The rules are needed to support grants from the Veterans Support Fund monies. The rules establish a new chapter setting forth the programs and projects eligible for grants and the grant process.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule revisions confer a benefit to grant recipients.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Veterans Support Fund established by Section 65-209, Idaho Code, began receiving funds through a check box on Idaho tax returns for 2008. The 2009 Idaho Legislature approved the addition of monies to the fund provided by the Gold Star license plate. These rules establish the framework for the expenditure of the funds in such fund through grants to projects and programs supporting veterans. Grants will not exceed the monies received by the Veterans Support Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated

rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 3rd day of July 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 21
TITLE 01
CHAPTER 03

21.01.03 - RULES GOVERNING VETERANS SUPPORT FUND GRANT PROGRAM

000. LEGAL AUTHORITY.

Section 65-204, Idaho Code, authorizes the Administrator of the Division of Veterans Services to promulgate rules with respect to all matters of administration under Title 65, Chapter 2, Idaho Code, including the disbursement of funds held under Section 65-209, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 21.01.03, "Rules Governing Veterans Support Fund Grant Program." ()

02. Scope. These rules establish a grant application and award process, set forth the programs and projects eligible for grants, and provide for the disbursement of funds. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. ()

003. ADMINISTRATIVE APPEALS.

The award of grants under the Program is a discretionary action to be performed by the Administrator. There is no provision for administrative appeal under these rules. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal place of business of the Office of the Idaho Division of Veterans Services is in Boise, Idaho. The office is located at 320 Collins Road, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is 320 Collins Road, Boise, Idaho 83702. The telephone number of the office is (208)334-3513. The facsimile number of the office is (208)334-2627. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 010. (RESERVED).

011. DEFINITIONS.

01. Administrator. The administrator of the Division. ()

02. Applicant. An individual or organization who has submitted a written request for grant funds. ()

03. Division. The Division of Veterans Services in the Idaho Department of Self Governing Agencies. ()

04. Program. The Veterans Support Fund Grant Program established by Section 65-209, Idaho Code, and these rules. ()

012. POLICY AND OBJECTIVE.

The objective of the Program is to fund programs to support veterans of the armed forces of the United States. The policy of the Division is to fund programs operated both within and outside state and local government. Veterans Support Fund grants are not provided to support the basic needs of individual veterans or their families. The Division will refer applicants for grants to support the needs of individuals to the Veterans Services Emergency Relief Program. ()

013. ELIGIBLE APPLICANTS.

Individuals, organizations, and governmental entities, including bureaus of the Division, may submit applications for funding from the Program. ()

014. GRANT PURPOSES AND PRIORITIES.

01. Eligible Activities and Costs. Any purpose meeting the objective of supporting veterans of the armed forces of the United States and not excluded in Subsection 013.02 of these rules is eligible to receive a grant under the Program. Eligible activities and costs include: ()

a. Programs to inform veterans and the public of services and programs for veterans, including programs offered by the Division. ()

b. Programs providing career training to veterans, including programs providing educational scholarships. ()

c. Programs providing training to individuals and organizations supporting veterans, including employees of public and private organizations assisting veterans with healthcare, education, and assistance in obtaining public benefits. ()

d. The acquisition of equipment supporting the health, rehabilitation, or recreational activities of veterans. ()

e. Financial support or sponsorship of ceremonies celebrating or honoring the service of veterans. ()

f. Programs providing social, health, rehabilitation, or recreational activities or care to veterans. ()

02. Ineligible Activities and Costs. Grant funds shall not be used for political, lobbying, religious, or illegal activities. Ineligible lobbying activities do not include: ()

a. Advocacy on behalf of individual Applicants for public benefits. ()

b. The provision of educational information to public officials concerning the needs of veterans that does not advocate for or support specific legislative proposals. ()

03. Funding Priorities. The Administrator will give priority to: ()

a. Applicants with grant proposals that will serve the greatest number of veterans; and ()

b. Applicants with grant proposals for which there is no other source of funding. ()

015. -- 019. (RESERVED).

020. APPLICATION, REVIEW, AND AWARD.

01. Application. Applications for Program grants may be submitted at any time. Applicants shall submit a grant proposal in the format required by the Administrator. Copies of the application format requirements and the list of supporting information may be obtained by contacting the Administrator at the address set forth in Section 005 these rules. ()

02. Review of Grant Proposals. Division staff review proposals for completeness and compliance with these rules and make recommendations for funding to the Administrator. The Administrator may establish review committees consisting of Division staff, representatives of veterans organizations, members of the Veterans Affairs Commission, or other individuals. ()

03. Grant Awards. The Administrator, in his sole discretion, makes all Program grant awards. The Administrator may establish conditions or requirements for the expenditure of grant

funds in a written agreement between the Division and the grant recipient. Conditions and requirements may include: ()

- a. The provision of matching funds from the grant recipient. ()
- b. The repayment of all or a portion of the grant funds upon specified events. ()
- c. The issuance of grant funds on a cost reimbursement basis. ()
- d. The submission of status and final reports. ()
- e. A completion date for the project or program. ()
- f. Bidding requirements for the expenditure of grant funds. ()
- g. Publication of credit to a grant from the Veterans Support Fund. ()
- h. A written accounting of the use of grant funds and copies of all receipts associated with the expenditure of grant funds. ()

04. Grant Modification. The Administrator and the recipient may modify the grant award by written agreement. Modification, restructuring, or amendment to the grant shall be approved in the sole discretion of the Administrator. ()

021. COMPLIANCE WITH LAW AND CONFLICT OF INTEREST.

All grant recipients shall comply with applicable law in the conduct of programs supported by a Program grant. Public entities and employees receiving or administering grant funds shall comply with the ethics, personnel, bidding, and accounting requirements generally applicable to the entity or individual. Unless specifically provided in the grant, no official or officer of a grant recipient, individual grant recipient, or family member of an official or officer of a grant recipient or family member of an individual grant recipient shall personally profit financially from a Program grant. ()

022. TERMINATION OF FUNDING.

Grant funding may be terminated by the Administrator at any time for use of grant funds in violation of these rules, the terms of the grant, or violation of any applicable law. Upon receipt of a written notice of termination, the grantee shall immediately cease all expenditures of grant funds and return all unspent grant funds. The Administrator may require a written accounting of the use of grant funds upon the termination of funding and may deny payment for costs claimed by the grant recipient and not substantiated by written documentation. ()

023. -- 999. (RESERVED).

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.04 - RULES GOVERNING THE IDAHO STATE VETERANS CEMETERY

DOCKET NO. 21-0104-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 65-202 and 65-204, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7, pages 99 and 100.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no negative fiscal impact on the general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

DATED this 30th day of July, 2009.

David E. Brasuell
Administrator
Division of Veterans Services
320 Collins Road
Boise, ID 83702
Phone: (208) 334-351
Fax (208) 334-2627

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is **November 18, 2008.**

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has amended a temporary rule and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-202 and 65-204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 15, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for amending a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Code of Federal Regulations, 38 C.F.R. Section 39.5(d), mandates that states receiving a grant for a veterans cemetery must deny interment to individuals convicted of certain capital crimes or who have avoided conviction due to flight. The rule change is necessary to enforce the requirements of 38 C.F.R. Section 39.5(d) on applicants for interment in the veterans cemetery.

AMENDED TEMPORARY RULE: The temporary rule is being amended to correct an erroneous citation to a federal regulation. The correction is 38 CFR 38.620. The temporary rule published in the January 7, 2009 Administrative Bulletin, Vol. 09-1, pages 411 through 412.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking and the need to be in compliance with amendments to governing federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the amendment to temporary

and proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 22, 2009.

DATED this 28th day of May, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 21.01.04 incorporates by reference the following: (5-3-03)

a. The full text of 38 CFR ~~438.620~~, dated July 1, 2001. (~~5-3-03~~)(____)

b. 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-30-06)

c. 38 CFR 39.5(d), dated July 1, 2008. (____)

02. Document Availability. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Administrator. The Administrator of the Idaho Division of Veterans Services or his designee. (5-3-03)

02. Applicant. The individual requesting interment, disinterment or reinterment of a qualified person. (5-3-03)

03. Armed Forces Member. A member or former member of the armed forces of the United States, the reserve component of the armed forces of the United States, the reserve officers training corps of the United States, or the armed forces of an ally of the United States who is eligible for burial in national cemeteries pursuant to 38 CFR ~~438.620~~ and 38 U.S.C. Section 2402. (~~5-3-03~~)(____)

04. Cemetery. The Idaho State Veterans Cemetery authorized pursuant to Section 65-108, Idaho Code. (5-3-03)

- 05. Committal Service.** A gathering of one (1) or more individuals prior to interment or reinterment. (5-3-03)
- 06. Cremains.** Cremated human remains. (5-3-03)
- 07. Designated Interpretive Trail.** A public recreational trail designated by a sign or marker. (3-30-07)
- 08. Disinterment.** The removal of human remains from their place of interment. (5-3-03)
- 09. Division.** The Idaho Division of Veterans Services. (5-3-03)
- 10. Interment.** The disposition of human remains by burial or the placement of cremains in a grave plot or in any location designated by the Administrator for use as a permanent location of cremains. (5-3-03)
- 11. Qualified Person.** A person who satisfies the requirements for eligibility for interment in national cemeteries found at 38 CFR ~~38.620~~ and 38 U.S.C. Section 2402 and is not prohibited from being interred by 38 CFR 39.5(d). (~~5-3-03~~)()
- 12. Reinterment.** The interment of previously interred human remains. (5-3-03)
- 13. Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (5-3-03)
- 14. USDVA.** The United States Department of Veterans Affairs. (5-3-03)